The Madras Law Journal

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CRITICAL NOTE.

Gobardhan Das v. Hori Lal.—I. L. R. 35 A. 364.

We are not satisfied that the decision in this case enunciates correct law. The document in the suit was required by law to be attested. But the executants and the attesting witnesses were all dead: The question for consideration was whether admissions relating to the genuineness of the document contained in other deeds executed by the original executants or their representatives were sufficient proof of the document. The learned Judges answered the question in the negative. The Judgment is very meagre having regard to the importance of the question that was decided. The learned Judges are of opinion that Ss. 68 to 72 of the Evidence Act are exhaustive of the modes of proof in such cases. We must differ. These Sections are in the Chapter headed "Of Documentary Evidence." The scheme of the Chapter is to lay down that whenever possible primary evidence of a document should be given. In other words the first rule is to let in the best evidence. Ss. 61 to 66 deal with proof of the contents of documents; all the rules relating to primary and secondary evidence come under this head: Then the framers of the Code deal with proof of handwriting. This is dealt with by Ss. 67 to 72: The object aimed at apparently is to ensure that the genuineness of a document should be established by the best possible evidence, namely by the evidence of the attestors, of the writer etc. S. 70 lays down that the admissions of a party to an attested document of its execution shall be sufficient proof: This Section should be read along with the general principle as to admissions contained in S. 18 of the Evidence Act which puts admissions by persons having a pecuniary or proprietary interest in the subject matter of the proceeding on the same footing as admissions made by the party himself: In this view, we fail to see why the admission

as to genuineness referred to by the learned Judges as the second piece of evidence will not suffice. In our opinion Ss. 69 and 70 read along with S. 18 cl. (1) will enable the Courts to admit this second statement as evidence; nor are sufficient reasons given for not treating as proof "a deed of sale executed in 1902 by the representatives or some of the representatives of the executants of the deed in suit, which recognizes the genuineness of the usufructuary mortgage mentioned above." Then as regards the statement of Lalta Prasad who claimed to be acquainted with the handwriting of the two attesting witnesses, the learned Judges discarded this piece of evidence because the latter part of S. 69 was not complied with.

We have thus far endeavoured to show that the learned Judges have not correctly applied the principles contained in Ss. 68 to 72 of the Evidence Act. We go further and say that the rule of English law that if the proof referred to in Ss. 68 to 72 is not available a document of this nature can be proved *by presumptive or any other available evidence* is applicable to this country. Rules of evidence are intended to help the Court to arrive at the truth and not to deny justice. As has been said by the Privy Council, the scheme of the Evidence Act is to allow evidence to be let in, the burden being on the objecting party to show that a particular piece of evidence is excluded by the Act. Moreover as pointed out by *Edge* C. J. in *The Collector of Gorakpur* v. *Palakdari Singh*[1] we can rely upon the English law of Evidence on matters on which the Code is silent. In this particular matter, the Evidence Act lays down practically all the principal modes of proof. The residuary provision giving courts discretion to let in *any other available evidence* is not enacted as a section. But that is no reason why principles of evidence founded on justice should not be indented upon as supplemental to the rules contained in Ss. 68 to 72. We have indicated sufficient grounds to show that the decision cannot be accepted as correct. The question is one of very great importance; and while we are not prepared to say that the decision is entirely unsupportable, we are justified in saying that the matter deserves fuller consideration than has been given to it by the Judges of the Allahabad High Court.

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1. (1889) I. L. R. 12 A. 1 at p. 11.

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JOTTINGS AND CUTTINGS.

Law Dinner held on the 11th instant:—We are glad to say that notwithstanding the fears expressed in some quarters, the Law Dinner has turned out a big success. Some 200 Hindu gentlemen were present. Every precaution had been taken not to wound their orthodox susceptibilities. With a little more care in the selection of dishes, and a little more elasticity in the arrangements, it might have been possible to draw even a larger number. The dinner need not also have gone forth as being under the auspices of the Bar Association. But these are matters of detail which we have no doubt will receive due consideration when the dinner has to be organised again. Vakils' gatherings and Bar dinners there have been in the past. But as a Law dinner where all the various sections of the Bench and the Bar are brought together, this is the first of its kind and the whole credit of conceiving the idea and carrying it into execution successfully belongs to the Advocate-General and those who, with commendable loyalty assisted him in the work. To sink personal differences in a common feeling of unity, requires a considerable amount of mental detachment, and sympathetic imagination and to give effect to it in a country of differences such as ours is no less a feat. It is not too much to say that but for the genial and powerful personality of the Advocate-General the thing would have been absolutely impossible. Whatever the conflicting interests of the various sections of the Bar, there is enough in common between them to justify and necessitate united action. In their contests with the Bench, in their interest in maintaining the purity of the profession and in their anxiety to promote healthy legislation, the whole Bar is one and has no individual conflicting interests. Vested interests apart, one even doubts if the time is not come for some process by which the whole Bar may be unified. The High Court has taken the first step by abolishing the second grade. We hope a time may come when there will be only one grade of practitioners by whatever name called. Turning to the proceedings of the evening, we do not feel called upon to say much.

Surely we are not required to examine how far the compliments exchanged represent wishes rather than actualities. One thing we feel certain of is that the Bench has positively improved in courtesy and that the Bar is making a conscious attempt to live up to the traditions of the English Bar. There are one or two matters about which we should like to say something. One is the retirement of the Chief Justice to which he so feelingly referred in his speech. We have no doubt that this will be universally regretted. Good manners are never out of place and certainly not on the Bench. The Chief Justice has always been the pink of courtesy and good manners. A good example in the Chief is never lost. So long as these qualities and calm and patient hearing are appreciated, so long the Chief Justice is not likely to be forgotten. The other thing to which we wish to refer is what the Chief Justice had to say as to expeditious disposal. We heartily agree with the Chief Justice; only we wish the same standard were applied to the Mofussil Judges so that they were less victimised by returns and judged generally by the merit of their performance and not by the quantity of work turned out. We hope the Chief Justice's remarks about good English will also be laid to heart by the younger (for the matter of that even the older) members of the bar. It is never amiss to speak a language well when you speak at all, apart from the usefulness of speaking well before judges whose mother tongue it is. We are glad that the Law dinner has come out well. We hope it will become an annual function making for the greater solidarity of the profession and all that it represents.

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* PROFESSIONAL ETHICS.

THE ADVOCATE AND HIS CLIENT.—(*continued*).

I shall now deal with the subject of " The proper remuneration which an advocate should receive". You will have observed from the remarks made in the first lecture that the state has often tried to regulate the amount of the remuneration which lawyers should receive. We found that this was the case in Rome and in France and we also found that there was a provision of that sort in the old Hindu times, in the *Sukraniti* from which I made a citation to you. You are aware that the modern tendency is not to regulate the relationship between persons who deal with each other at arms length by any hard and fast rules. It is considered to be economically unsound to do so. It would not bring relief to the party intended to be benefited while it would lead to indirect action on the part of the person who is sought to be restrained. At the same time it has always been considered necessary to prevent the rapacity, if I may so call it, of lawyers, for there is no doubt that the leading lawyers would always be in a position of vantage with respect to their clients. Though it is no doubt true that the large numerical increase in those who practice the profession has a tendency to lower the remuneration which the *ordinary* members are likely to be able to receive, it must always be the case that those who have succeeded in obtaining a reputation for skill in advocacy would be likely to be able to command very heavy fees. At the same time, even those who have not established such a reputation are apt to take indirect advantage of their clients, and it is desirable at any rate to enunciate a standard of what should be regarded as fair remuneration even though it may not be expedient to lay down any rigid rules to regulate the amount.

In England and in this country also the remuneration that a solicitor is entitled to receive is more or less fixed and a scale of

* The Seventh of a series of addresses delivered by the Hon'ble Mr. Justice P. R. Sundara Aiyar one of his Majesty's Judges of the High Court of Judicature at Madras to the apprentices of the year 1910-1911 at the request of the High Court.

fees is laid down for every kind of work that a solicitor may do. The scale may not provide for all kinds of work possibly, but still there is no doubt that most of the work which ordinarily falls to a solicitor is provided for either by the rules or by the established practice of the profession. A solicitor is not entitled to get his fees from his client until his bill has been taxed, and it has been subjected to the scrutiny of an officer of the Court whose duty is to see that the return exacted for any particular piece of work is not excessive. No doubt a solicitor may enter into a contract providing for remuneration in lump for the whole amount of the work he may do in connection with a particular piece of work. But where there is no such contract, the amount he is entitled to receive is fixed, and as I told you, payment is not made ordinarily to a solicitor before-hand but only after the work has been done, and his bill has been taxed. A solicitor according to the practice in England and I believe in America also, is also entitled to advance money to his client for the conduct of the case while a barrister should not do so. Now the question would occur to you, what is the correct rule in that respect with regard to Vakils. Probably the Courts may not be prepared to condemn the advance of money by a Vakil during the progress of an original suit and it may be difficult to distinguish between original work and appellate work in this respect. As far as I am aware, the question has never been subjected to judicial decision with respect to the propriety of making advances. But you will remember, the rule we have adopted for our guidance in the course of these lectures, to adopt always the higher standard, and personally I would be inclined to advise that a vakil should abstain from advancing moneys for the purpose of litigation. If a client fails to put a solicitor in funds for the conduct of a case, that would be a good ground for the solicitor claiming a discharge, so that it is not to be supposed that there is any duty on the part of any attorney to finance to any extent the litigation of his client.

With respect to this question of remuneration the Legal Practitioner's Act contains 3 sections intended to restrain pleaders in the arrangements they enter into for fees with their clients, though they are *prima facie* at liberty to enter into any contract they like. The safeguards provided are these: S. 28 says: "No agreement entered into by any pleader with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such pleader, shall be valid unless it is made in writing, signed by such person,

and is within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done." The Court thus would obtain information of any special contract which may have been entered into; the object of it is laid down in the next section: "where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made." Thus, while no rules are laid down regulating the fees that may be received by a pleader, the Court possesses an equitable jurisdiction to modify any contract that may be entered into. The Court will not refuse any remuneration to a pleader on the ground that the stipulation between the parties provides for the payment of an excessive amount but the amount will be determined in the same manner as if no such agreement had been made. "Such an agreement," the next section provides, "shall exclude any further claim of the pleader beyond the terms of the agreement with respect to any services, fees, charges or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement." The result therefore is that the pleader would not be entitled to claim more than he has agreed to receive, but the client would be entitled to the intervention of the Court if the pleader has taken undue advantage of his position and exacted an amount which appears to the Court unreasonable. Within these limits, liberty is left to the pleader to enter into any agreement that he considers proper. You will have understood, I take it, that an express agreement is not required to entitle a pleader to receive fair remuneration from his client. Every person is entitled to remuneration for work done and a pleader is no exception to the rule. If he does enter into a special contract, that contract ought to be reduced to writing and filed in Court so as to enable the Court to exercise its powers of supervision. Although there is no provision of law requiring any agreement to be entered into I think it is very desirable that in every case there should be a clear and definite understanding with the client as to the remuneration he has to pay. It may often happen that you appear for the same client in a number of cases, that you acquire his confidence, and that he gives you all his work and sometimes the work may be very considerable and may consist of a large number of cases of all kinds. It is desirable that

there should be a definite arrangement with regard to every case separately. You may rest assured that if that is not done, it is very probable indeed that many a client would in course of time begin to believe, reasonably or unreasonably, that his vakil is having the advantage of him and that he is made to pay more than he should. This may not be the fact, but any such impression ought to be avoided and therefore there ought to be a record of the arrangement made with respect to every case. Such an arrangement should be made as soon as possible, and generally before the work is undertaken. This may not always be possible. But at any rate it should be done as early as possible and certainly before much progress has been made in the doing of the work. This is often neglected by vakils with the result that they unnecessarily suffer in the estimation of the client. Never put off this duty in the hope that you will be able to get better terms from your client if you allow time to elapse that you would get more control over him as the work advances and that then you can charge a higher remuneration than you would be able to do in the beginning—that is absolutely immoral and ought not to be tolerated. Sometimes it may happen that the client tries to put off any definite arrangement in the hope that by paying small sums from time to time he may succeed in not making the total amount large. But unless the advocate is particularly kind or lenient the chances are the sum total would in the end be found to be larger than the client will consider reasonable.

It is with reference to this question of remuneration that a successful lawyer often feels tempted to pick and choose between different clients. It is likely to happen to every successful man that his services are courted by many men and courted by both sides in a litigation. They may be prepared to pay absolutely exorbitant fees out of all proportion to what the services required are worth. They wish to get a certain individual on their side if that be possible, and sometimes they are determined to get several gentlemen on their own side, not merely to have the benefit of their services but also to deprive the opposite side of the services of the people who they believe have persuasive powers over the Court. Never yield to the temptation of taking advantage of this position. The rule is, as I told you, that the client who comes first is entitled to retain you. Some times no doubt the position may be difficult. The Vakil may have generally appeared for the opposite client and yet there may be no understanding that he is to appear for him in all his cases. Then the opponent comes and offers to engage the services of the Vakil in a particular case. There may be natural hesitation to

accept the brief, arising out of consideration for the man who has failed to come first. The English practice seems to be clear—that the person who first comes is entitled to the services of the advocate. There are very elaborate rules in England as to how to secure the right to the services of counsel. There are general retainers and special retainers and where there is a general retainer a special retainer has to be given at a certain stage. It is now unnecessary to trouble you with these rules. No such rules have been framed for the conduct either of barristers-advocates or vakils in this country—neither rules of the Court nor any rules of etiquette which guide the members of the Bar. At the same time advocates do feel bound in honor to accept the engagement which is first offered to them. But it must be confessed that this duty is often evaded. A client is put off on some ground or other to await the chance of the other side turning up. If I feel bound to caution you against putting up the right to your services to auction between the combatants, it is because unfortunately it is too true that there have been advocates who were guilty of that extremely wrong act. I am also acquainted on the other hand with others who after they had fixed a proper remuneration would never stoop to being tempted to prefer their client's opponent because he offered a higher remuneration. Whatever you may consider a proper value for your services—I need hardly say it should not be oppressive or exorbitant. There may sometimes arise difficulties in deciding as to which side a person is bound to appear for. One may feel unable to say whether a client has acquired a right to his services or not. One sends him a telegram retaining him, another sends a letter; the terms in one of them are not perhaps quite definite. In England any difficulty of this sort is solved by referring the question to the Attorney-General or to the Solicitor-General and his ruling is accepted. There is no etiquette here as to how the difficulty is to be solved, though there are instances where reference has been made to some other leading practitioner and his decision abided by. But practically, it must be confessed, it is left to the good sense and fairness of each individual advocate. These are difficulties that may not actually occur to many of you. But I am sure they will occur to some and may happen in the case of any one. It may not be that the advocate is particularly able, but it may happen that in individual cases, owing to his previous knowledge of the facts of the litigation or on some other ground both the litigants wish to claim his services. The instincts of an honourable man would probably be a sufficiently safe guide in many of such cases if it is remembered that a vakil is following what should be regarded

as a public profession and that his duty to serve all those who are in difficulties on account of litigation and that he ought not, in accordance with the dignity of his office, decline his services without good reason to any one. In England a barrister does not feel himself at liberty to charge different rates of fees in the case of different clients. It would make no difference to him whether a client is rich or poor. His remuneration depends upon the nature of the case. Generally there is a fee with a brief and then there would be fee for each day. The former would be for studying the case and getting ready to argue and probably for the argument—I am not quite sure of that—on the first day. And then there would be a refresher for each day. Sometimes no doubt Attorneys of their own free will and on the invitation probably of their own clients mark on the brief a much larger fee than the advocate would generally demand.

The Ontario Bar have stated what they consider to be right in rules 52 to 56 of their rules.

" (52) Satisfactory relations between attorney and client are best preserved by a frank and explicit understanding " at the outset of the amount of the attorney's compensation; and where it is possible, this should always be agreed upon in advance.

" (53) In general it is better to yield something to a client's dissatisfaction at the amount of the fee though the sum be reasonable, than to engage in a law suit to justify it, which ought always to be avoided, except as a last resort to prevent imposition or fraud.

" (54) Men as a rule over-estimate rather than undervalue the worth of their services, and attorneys in fixing their fees should avoid charges which unduly magnify the value of their advice and service, as well those which practically belittle them. A client's ability to pay can never justify a charge for more than the service is worth; though his poverty may require a less charge in many instances, and sometimes none at all.

" (55) An attorney may charge a regular client, who entrusts him with all his business, less for a particular service than he would charge a casual client for like services. The element of uncertainty of compensation where a contingent fee is agreed upon"—I shall have to deal with the question of contingent fees separately— " justifies higher charges than where compensation is assured.

" (56) In fixing fees the following elements should be considered: 1st. The time and labour required, the novelty and the difficulty of the question involved and the skill requisite to properly

conduct the cause; 2nd. whether the particular case will debar the attorney's appearance for others in cases likely to arise out of the transaction and in which there is a reasonable expectation that the attorney would otherwise be employed; and herein of the loss of other business while employed in the particular case and the antagonism with other clients growing out of the employment; 3rd. the customary charges of the bar for similar services; 4th. the real amount involved and the benefits resulting from the services; 5th. whether the compensation be contingent or assured; 6th. is the client a regular one retaining the attorney in all his business? No one of these considerations is in itself controlling. They are mere guides in ascertaining what the service is really worth and in fixing the amount. It should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade." I am not quite sure that an English barrister would agree in these rules altogether, for instance "the antagonism with other clients growing out of the employment"—he may well doubt whether that is an element which an advocate ought to be entitled to take into consideration. His duties indeed are such that he must be brought into antagonism with many litigants. Moreover a rule permitting him to take that into consideration is likely to give room for casuistical questions which a person may easily solve to his own advantage. But perhaps in practice most advocates would be inclined to take these matters into their consideration. In America the advocates have more freedom in this matter than in England. You know that the American view is that an advocate is at liberty to take up any case or to decline any case as he thinks proper with very little restraint on himself while the English rule is just the contrary. It is not then to be wondered at that an American attorney would in fixing his own remuneration take several things into consideration that an English barrister would not feel justified in doing. In England there are some rules with regard to remuneration that are based not really upon what is properly due to the client but upon considerations relating to the profession itself. The body of practitioners being large, in order to keep up the dignity of the profession which can only be done by rules which would secure at least some work for all, there are rules intended to prevent people from doing an excessive amount of work and thereby making it difficult for others to get on. Therefore the rule is that if a barrister takes up an engagement in a Court in which he ordinarily does not practice he should demand a higher fee. If he goes to a circuit which he has not joined as a regular adherent, he should demand a higher fee. Obviously this is not intended to protect the clients but to

protect the other members of the bar. In the Chancery Court the rule is that certain practitioners attach themselves to each judge's Court—a certain number of K. C's and a certain number of juniors, that is, ordinary counsel, who are not honoured with the distinction of counsel to the King, and they generally confine themselves to the court of that judge. If they go to another judge's court they are bound to demand a higher fee. There are several other rules based on this principle. In this country of course we have no such rules, and practically those who have got the choice are left to demand any fee that they like. The necessity therefore for a fair standard in the demand of remuneration is particularly required in this country. In Madras the practice now when leading gentlemen are called away to the mofussil is to demand a day fee and what is called a retainer, that is a sum of money, often very large, which is charged first and paid either altogether in advance or in 2 or 3 instalments. It is supposed to be for studying the case and taking the responsibility of the general management of it on one's own shoulders, a further payment being made for every day that the vakil is either out of Madras or actually engaged in the place which he goes to. In Calcutta I believe the system of retainers does not obtain but the fee charged for each day's service is larger than it is in this Presidency.

The exorbitant demands of the members of the profession have often been a ground for condemnation of the profession. Under the heading of 'solicitors plundering estates' we find these remarks in 23 Canadian Law Times 103 "Some very severe remarks were recently made by Mr. Edge, judge of the county courts, at the Clerkenwell County court—(in England)—in relation to the conduct of a solicitor, who in the opinion of the judge, had attempted to wreck an estate by running up and incurring unnecessary costs. What could any one think, asked the judge, of a solicitor who brought in a bill of costs for £102 against an estate of £180? And he disallowed the whole of the solicitor's profit costs, leaving him £44 disbursements, and made him pay £25 towards the costs of the other side. His Honour further expressed his intention of laying the facts of the case before the Law Society. A 'Windsor barrister' commenting on this writes: 'it strikes me very forcibly as being applicable to several cases in our own courts, and if our own judges would take the same drastic measures in similar cases, the results would be beneficial to the profession and the public at large'." Here is a somewhat interesting remark about some barristers who not only think it right to receive very heavy fees but pride themselves on

doing so. This is from the Law notes "Is it not time the Bar Council turned their attention to a little domestic subject? We refer to the growing practice of barristers bragging about the big fees they receive. We are sick of "pars" in the papers that in the recent great case *Wylie* v. *Lewis*, Mr. Parchment had 2,000 guineas and Mr. Quibble had 2,500 guineas and so on *ad nauseam*: Of course we are told it is the naughty clerks—those indiscreet persons. But a barrister always takes precious good care to place his brief in a conspicuous position when it has a good fee marked on it. Our dentist does not write to the papers and tell the world what he charged for—whatever nasty operation it was. Our friends the barristers, have nobbled the press and become the biggest advertisers on earth. The phrase "largest fee ever received" reminds us of Lipton's advertisement of the "largest cheque ever paid for duty on tea." Bah! the whole business is bad form. The Bar Council should see into it."

Now once the fee is settled no demand of any change should be made. No variation of the fees should be claimed because it afterwards happens that the work is more heavy than it was anticipated to be. This is a principle which perhaps is generally acted upon by all honourable members of the profession; but not only should nothing more be demanded but nothing more should be received, especially no gift should be received, because the result of the case has been in favour of the client. Would any one of us feel justified, if a visitor turned up and offered a thousand rupees as a present, in receiving it. Most people, I take it, would have no hesitation in declining to take any present. If that be so, if the advocate has fixed the proper remuneration for his services, what justification could he have as a man of self-respect for receiving money which a grateful client is willing to make a present of to him? Does the fact that he was a client or that the advocate did work for him for which he has received remuneration justify him in degrading his own sense of self-respect and honour and consenting to receive the present. There may be possible exceptions to this rule; it may be that on account of the poverty of the client, out of consideration for his helpless state an advocate might have consented to receive a small remuneration. It may have been excessively low in proportion to the work that had to be done. One might not be inclined to be severe with an advocate if in such a case he consents to receive a present. There is no law against it, I must say, but except in very exceptional cases indeed a present ought to be declined. Sometimes there are pauper cases where work is done out of charity. It may be that the pauper gets much property by

means of the litigation. It would perhaps be hard to say that in such a case the fee paid afterwards without any previous agreement should be declined. It is considered in England a great dishonour on the part of an advocate or any other lawyer to make any attempt to revise the agreement as to fees. For counsel to allow the fees to be altered after the litigation has ceased is against professional etiquette and to say that a barrister has allowed his fees to be altered in this way is a slander on him in the way of his profession and actionable *per se.* So counsel ought not to receive for professional work any sum of money except stated fees for particular matters. He ought not to receive moneys generally on account without specifying each item. It is sometimes the practice of unthinking practitioners in this country to receive fees generally on account of a standing client without a definite understanding as to its appropriation. This is not only not in keeping with the traditions of the bar but is likely to lead to future trouble.

I now come to the question of contingent fees, that is a barrister or an advocate entering into an agreement as to the fee payable, conditional on the client's succeeding or on the decree in his favour being for more than a certain amount. Sometimes the agreement is that a certain sum should be paid at all events, but a larger amount in case of success. On this question there is a difference in the view taken in England and in America. In America contingent fees are not regarded as absolutely improper. You would have observed that already in the passage I read from 28 Canadian Law Times. There the rule may be taken to be in accordance with this statement. " Contingent fees may be contracted for, but they lead to many abuses, and certain compensation is to be preferred" and it is said that if the fee is contingent and not assured the amount may be a little larger than where it is fixed. The rule in England is the contrary, that any arrangement for a contingent fee is improper. Marchant in his Barrister-at-Law referring to a case decided more than 200 years ago says this—"A promise to pay counsel according to the event of the case exposes the parties to the penalty of maintenance (i. e. maintaining litigation). A bargain securing to a barrister a share in the proceeds of litigation is void for champerty and any security given for the performance of such a bargain is liable to be set aside."

The trend of authority in India is against the allowance of contingent fees. You will find several cases dealing with the question. There is a very recent case reported in 3 Allahabad Law

Journal p. 151. In 4 Cal. Weekly Notes the same opinion was expressed by the Calcutta High Court and earlier cases in Calcutta are to the same effect, one of which is reported in 21 Weekly Reporter 297. In Madras it was decided in a case reported in 3 Mad. 138 that contingent fees were not proper. It would appear that there was a circular issued by the Sudder Court in 1853 that contingent fees should not be stipulated for. There is a recent case in Bombay reported in 5 Bom. Law Reporter 102. In the Bombay High Court, the earlier view was that contingent fees were not absolutely illegal. The cases that I have cited are to the effect that the arrangement is altogether illegal. It is not merely that it is not proper or is not in keeping with the dignity of the profession but the agreement is regarded as contrary to law. But assume it is not illegal. I think there ought to be no doubt that contingent fees ought still to be held to be improper. If a man's remuneration is to be dependant upon his success to what temptations may he not be exposed? He would indeed too closely identify himself with his client's success in the litigation. The temptation to suborn evidence, to lower the standard of fairness, to act fraudulently it may be, would indeed become very strong. In the interests of advocates themselves and in the interests of the public there ought to be no doubt that contingent fees ought to be discouraged as a rule. Should there be any exceptions to the rule? It may happen that the suitor is a pauper and cannot pay. Either he must go without the services of a counsel or he can agree to pay only on condition of his success. The litigation may be complicated and yet the amount the client can agree to pay at once might be disproportionately small to the amount of work involved. If legislation is to be attempted it may be possible to provide for such cases, by allowing such agreement subject to the sanction of the Court, so that strict watch might be kept on the conduct of those who make stipulations of that kind. Even then indeed it is doubtful whether the evils arising from such agreements could be effectively checked by judicial supervision. As the only proper course for assurring oneself against temptation is to adopt a general rule which will be a safe guide such arrangements should perhaps be altogether avoided.

NOTES OF INDIAN CASES.

Bai Ramkore *v.* **Jamna Das Mulchand.**—I. L. R. 37 B. 18.—In this case the Bombay High Court considered the nature of the right conferred by the text of Yagnawalkya upon certain relations to make the gift of a girl in marriage and agreed with the decision of the Madras High Court in *Namasivayam Pillai v. Annammai Ummal*[1]. It may be pointed out that in a later case, the Madras High Court has held that the text deals only with the religious rite of making a gift of the bride and has nothing to do whatever with the right of guardianship. See *Ranganaikammal* v. *Ramanuja Aiyangar*[2].

Mahomed Jusab Haji Adam Nurani *v.* **Haji Adam Haji Usman Nurani.**—I. L. R. 37 B. 71.—In this case the plaintiff a minor son of a Cutchi Memon sued his father for maintenance and prayed that the amount might be declared a charge on the ancestral property of the defendant. The judge on the Original Side held that the Mahomedan Law and not the Hindu Law applied. We are very doubtful about the correctness of this decision. No reference is made to the earlier cases of *Karim Nensey* v. *Heinrichs*[3], *Rahimatbai* v. *Hirbai*[4], and *Rashid Karmali* v. *Sherbanoo*[5]. It may be pointed out that Mr. Justice *Beaman* in *Hassanally Moledina* v. *Popattel Parbhudas*[6] doubts whether the decisions which state that in testamentary matters the Khojas should be governed by Hindu Law are authoritative and final.

Mahamad Ghaus *v.* **Raja Baksha.**—I. L. R. 37 B. 224.—In this case the Bombay High Court hold that the position of a Fakir of a Makhan or the holder of the office of Surguro resembles the position of a holder of ghatwali tenure so that each holder will be entitled to a life estate. An alienation of land by one holder cannot be adverse to his successor and the latter will have according to the decision in this case 12 years from the death of his predecessor.

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1. (1869) 4 M. H. C. R. 339.
2. (1911) 21 M. L. J. 600.
3. (1901) I. L. R. 25 B. 563 (571, 573) s. c. L. R. 28 I. A. 198 (200—202).
4. (1877) I. L. R. 3 B. 34, 41.
5. (1904) I. L. R. 29 B. 85 (89, 90).
6. (1912) I. L. R. 37 B. 211.

SUMMARY OF ENGLISH CASES.

In *re* Samuel [1913] A. C. 514 P. C.

Parliament—Disqualification to sit and vote in—Contract with Secretary of State for India in Council—Secretary, an Officer of British Government—Secretary, a person and not a body corporate—'Public Service' in 41, Geo. 3 C. 42, S. 1., includes Service in British India—Position of the Secretary of State for India—Construction of statutes.

The words " or any other person or persons whatever," occurring in S. 1 of 22 Geo. 3 C. 45, which section in conjunction with S. 41, Geo. 3 C. 42. S. 1., disqualifies a person from sitting and voting in Parliament if he makes any contract for or account of 'public service' with certain specified officers of His Majesty 'or any other person or persons whatsoever' are to be taken *ejusdem generis.* The Secretary of State for India is such an officer and is an officer of British Government in the fullest sense, and though practically he attends to Indian affairs mostly, he is entitled to do also the duties assigned to other Secretaries of State.

' Public Service' in the above Act, is not to be construed as ' Public Service of Great Britain.' It includes public service which need not be executed or requited within Great Britain or paid for out of any particular fund. It means any public service of the Crown anywhere.

The Secretary of State for India is a person within the meaning of the above statute and not a corporate body in spite of S. 65 of 21 and 22 Vic. C. 106, which allows suits to be brought by and against Secretary of State in Council as a body corporate and in spite of the fact that he has to obtain the concurrence of the other members of his Council before making tho contract. He and they have distinct functions prescribed by the Statute and his personality is not merged in any body corporate by the Statute nor is that of the Council. In some particulars they can check him or he can override them.

Obiter.—It is not a conclusive argument as to the construction of an earlier Act to say that unless it be construed in a particular way a later enactment would be a surplasage. The later Act may have been designed, Ex abundanti cautela, to remove possible doubts.

In re Avenon's Charity: Attorney General v. Pelly: [1913] 2 Ch. 261.

Charity—Endowment for a "Sermon" once a year—Increase in the income—Cypres—Religious purposes—Trustees—Scheme.

Where the income of an endowment largely exceeded the limits of the necessities of the endowment which was for a sermon once a year in a Parish Church and the income had to be applied *cypres.*

Held that the income could not properly be applied for the promotion of secular education and could only be applied for a religious purpose in the parish which attached to the church. At the time of the endowment, the parish limits were very much wider. Nevertheless it was held that the proper thing to do was to restrict the benefit to the parish attached to the church.

Pink v. J. A. Sharwood & Co., Limited: [1913] 2 Ch. 286.

Practice—Discovery—Person of unsound mind—Affidavit of documents—Rules of Supreme Court, Order 31 rr. 12, 29.

The next friend of a person of unsound mind cannot be ordered to file an affidavit of documents under order 31 r. 12, the next friend not being party to the action and there being no express provision in that behalf as in the case of infants.

Hope Brothers, Limited v. Cawan: [1913] 2 Ch. 312.

Landlord and Tenant—Demise of a floor, room or office—Both sides of the wall comprised within—Fixing of flower boxes outside window.

Unless there is an exception or a reservation or something in the context to exclude it prima facie where there is a demise of a floor or room or an office bounded in part by an outside wall, the premises demised comprise both sides of the wall and the lessee cannot be restrained for instance from fixing flower boxes outside the window.

Muir v. Jenks [1913] 2 K. B. 412.

Practice—Writ for Liquidated amount—Part-payment—Default in appearance—Judgment and Decree for sum in excess of amount actually due—Setting aside.

Where the plaintiff obtains judgment in default of appearance of defendant for a sum in excess of the amount actually due to him, the defendant is entitled to have the judgment set aside unless the plaintiff who obtained judgment applies to reduce the decree amount. Delay on the part of the debtor will not preclude the judgment from being set aside.

Ray *v.* **Wigand** [1913] 2 K. B. 419.

Practice—Disobedience of order of court—Personal service—Absence of—Going out of jurisdiction—Sequestration, writ of.

Where a person disobeyed the order of the Court of King's Bench to do a particular act with full knowledge of the order and went out of the jurisdiction before the order had been personally served on him the court following the practice of the Divorce Court dispensed with the personal service of the writ of sequestration to enforce the order and directed writ to issue.

Gelmini *v.* **Morigia** [1913] 2 K. B. 549.

Limitations, Statute of—Action commenced within six years after the cause of action arose—Inclusion of day on which cause of action arose—Six years expiring on Sunday—Issue of writ on following Monday—Limitation.

In this case the time for payment of a promissory note including days of grace expired on Sunday September 22 1906. The holder issued a writ on Monday the 23rd September 1912. It was held that as the last day for payment was 22nd September 1906, an action could have been brought on 23rd September 1906 and therefore the six years allowed by the Statute expired on Sunday 22nd September 1912 and the writ issued on Monday the 23rd September was too late.

Lofthouse Colliery Ltd. *v.* **Ogden** [1913] 3 K. B. 120.

Practice—Award—Ambiguity—Jurisdiction of court to declare meaning of—Order XXV rule 5.

Where an award is expressed in ambiguous terms and there is no right of appeal from the award the High Court has jurisdiction to determine what it means and declare the rights of the parties under it accordingly.

Phillips v. Batho [1913] 3 K. B. 287.

Foreign judgment—Court in British India—Decree for Divorce and damages against co-respondent—Domiciled in England—Recoverability in England.

Plaintiff a British subject domiciled and resident in British India, married in India and instituted a suit for divorce under the Indian Divorce Act 1869 making the defendant a co-respondent. The defendant who was a domiciled British subject had left India at the time of the institution of the suit leaving no property behind. He resided in England and the notice of the petition for divorce was duly served on him by registered letter in accordance with law. The court passed a decree and dissolving the marriage and awarding damages to the extent of £ 7000. Held that plaintiff was entitled to recover the damages awarded by the judgment of the Indian Court.

JOTTINGS AND CUTTINGS.

Trial Judges and Appellate Courts.—That veteran authority on all points of criminal law and procedure, Sir Harry Poland, has, we are glad to see, contributed to the *Times* a letter condemning the practice of judges sitting in the Court of Criminal Appeal to hear appeals from their own decisions or sentences. On the other hand, a judicial correspondent, who conceals his identity under the *nom de plume* of 'Judex Damnatus,' has contributed to the same journal a not very whole-hearted defence of the practice. Apart from the unconvincing argument from the supposed convenience of the practice, he adduces two reasons for suggesting that the Legislature has deliberately intended this practice to be adopted in criminal appeals. The Judicature Act 1875, he points out, forbids the practice in the case of the Civil Court of appeal; whereas the Criminal Appeal Act of 1907 is silent about it. Hence he draws the inference that in the latter case the silence of the Legislature means its endorsement of the system. Surely the simple explanation is that, in the year of grace 1907, Parliament never dreamed that any body of judges would think of reviving the old civil practice which prevailed before the judicature reforms of 1873. Again, when an amending Act was passed three years ago enabling all the judges of the King's Bench Division to sit in the Court of Criminal Appeal instead of only nine, as was the rule laid down in the Act of 1907,

no prohibition of the practice complained of is to be found. Hence, he argues, the Legislature desired it to continue! But everyone knows that one of the chief reasons for the amending Act, which increased the number of judges available for the Court, was to render unnecessary the presence of the trial judge as a member of the tribunal. That system we believe, was discontinued for some time afterwards and its recent revival has therefore occasioned surprise as well as criticism. While we cannot regard the pleas of 'Judex Damnatus' as at all convincing, we are glad to gather from a somewhat cryptic sentence at the commencement of his letter that the judges are not likely to resume an arrangement which public opinion has so emphatically condemned.—*Law Journal.*

* * *

Universal Malice.—A curious point arose last week in a Scottish murder trial at Glasgow, *The Lord Advocate* v. *Albert Wade French* (August 23). The prisoner, a trade union official, was accused of murdering a man named James Mart at Glasgow Harbour on June 18 by discharging a loaded pistol at him. It appears that during a trade dispute between two rival seamen's unions, French fired a pistol into a crowd, and the bullet chanced to kill Martin. Admittedly French had no ill-will against Martin and had not fired at him or with any special intention of killing him. In these circumstances Lord Guthrie, the presiding Judge, told the Jury that they could convict the prisoner of culpable homicide (the Scots name for manslaughter) but not of murder. There was no selection of a particular victim, he pointed out, and no evidence of any intention to kill; in fact, the evidence merely pointed to gross recklessness. The defence was 'misadventure' and the jury in fact acquitted the prisoner,

It is possible that Lord Guthrie's direction to the jury may be a correct statement of the Scots law as to the *mens rea* required in murder, but it would not have been a good direction had the trial taken place in England. It is defective, as a statement of English law in at least three different ways. In the first place the 'malice aforethought' which is a necessary ingredient of murder in our law need not involve any selection of a particular victim. There are, in fact, six different kinds of malice which are sufficient to constitute murder (see Clark's Criminal Liability pp, 85-90; Kenny's Criminal Law, pp. 133-137). First, intention to kill the particular person in fact killed. Secondly, intention to kill A, which results in unintentionally killing B (*Rejina* v. *Salisbury*, Plowden 100). In the old legal phrase, *malitia egreditur personam,* the *mens rea* is

transferred from the injury contemplated to the injury actually committed. Thirdly, intention to kill without selecting any particular victim. This is known as ' Universal Malice ' and is recognised by Blackstone (4 Commentaries 200). Fourthly, there is intention to hurt only but by means of an act intrinsically dangerous to life. The classic case is that of *Rex* v. *Holloway* (1628, K. S. C. 103); here a park-keeper tied a trespasser to the tail of a horse and proceeded to beat him—the horse ran off and killed the boy. Fifthly, intention to do an act intrinsically dangerous in sheer rashness, without intention either to hurt or to kill, but which in fact causes death *e.g.* firing a haystack on which a person is sleeping. Sixthly, intention to commit any felony which in fact results in killing someone by accident. Thus a man who shoots at a fowl intending to steal it, *i.e.*, intending to commit the felony of larceny, and who kills a bystander by accident, is guilty of murder (Foster's Crown Law, 258). But modern judges have doubted the correctness of the fifth and sixth rules, although well supported by old authorities, ever since Sir James Fitzjames Stephen's criticism of them in *Regina* v. *Leon Serne* (1887, 16 Cox 311).

It will be seen, in the first place that the third of these cases, that of ' Universal Malice ' covers the offence of firing into a crowd with a pistol. Again, evidence of an intention to kill is not in English law necessary, no such intention is necessary in case 4, which is certainly still law, or in cases 5 and 6 which are probably so. Lastly, ' gross recklessness ' in the firing of a pistol would, in English law, have constituted ' malice aforethought ' by virtue of the fifth rule. It would seem, then, that the English law—with its doctrine of constructive murder—is much harsher than the Scots.—*Ibid.*

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Mr. Justice Darling contributes to the September number of the *Cornhill Magazine* a poetical tribute to the memory of Mr. Alfred Lyttelton. The sonnet, which is entitled ' Alfred Lyttleton,' begins :—

Alfred, we erst as Summer Circuit came,
By idling Wye, or Severn's haunted shore,
Roamed with such rare forensic friends as more
Of leisure than of learning had.

It was to the same magazine that Mr. Justice Darling contributed his poem on the death of Mr. Justice Talfourd, called " On the Circuit Circuit.'—*Ibid.*

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Professor Ludwig Von Bar.—Professor Ludwig Von Bar the distinguished authority on international law, whose death is announced was born in Hanover in 1835, and after teaching for many years in the University of Gottingen published in 1859 his first book 'Zur Lehre von Versuch und Teilnahme an Verbrechen.' His famous text-book on international civil and penal law was published in 1892. The last twenty years of his life were devoted to two objects—the reform of the German penal and civil code, a subject on which he wrote many important books and the cause of international arbitration, with which his name is so closely associated. He was a member of the International Arbitration Court of The Hague and was for a long time president of the Institute de Droit International. He received from the Universities of Cambridge and Oxford the honorary degree of LL. D., and he was among the eminent jurists who attended the recent meeting of the International Law at Oxford.—*Ibid.*

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LORD HALDANE'S ADDRESS.

'A STUDY IN LAW AND ETHICS.'

The Lord Chancellor attended the meeting of the American Bar Association at Montreal on Monday, and delivered an address on 'Higher Nationality: a Study in Law and Ethics.' Chief Justice White, of the United States Supreme Court, occupied the chair, and among those present were Mr. Taft (ex-President of the United States); Mr. Joseph Choate (ex-Ambassadar to Great Britain); the Right Hon. Robert Borden (Prime Minister of Canada); His Excellency Sir Charles Fitzpatrick (Administrator of Canada in the absence of the Duke of Connaught); Maitre Labori, of the Paris Bar; the Hon. C.J. Doherty (Canadian Minister of Justice): Senator Elihu Root; and Mr. J. E. Martin (Batonnier of the Montreal Bar Association).

LORD HALDANE, after expressing the pleasure with which he found himself 'among his fellow-lawyers of the New World,' read the following message from the King:—'I have given my Lord Chancellor permission to cross the seas, so that he may address the meeting at Montreal. I have asked him to convey from me to that great meeting of the lawyers of the United States and of Canada my best wishes for its success. I entertain the hope that the deliberations of the distinguished men of both countries who are to assemble at Montreal may add yet further to the esteem and good-will which the people of the United States and of Canada and the United Kingdom have for each other.' The King's message (said the Lord

Chancellor) forms a text for what I have to say, and I propose in the first place to turn to the reasons which make me think that the class to which you and I belong has a peculiar and extensive responsibility as regards the future relations of the three countries. But these reasons turn on the position which Courts of Law hold in Anglo-Saxon constitutions, and before I enter on them I must recall to you the character of the tradition that tends to fashion a common mind in you and me as members of a profession that has exercised a profound influence on Anglo-Saxon society. It is not difficult in an assemblage of lawyers such as we are to realise the process by which our customary habits of thought have come into being and bind us together. The spirit of the jurisprudence which is ours, of the system which we apply to the regulation of human affairs in Canada, in the United States, and in Great Britain alike, is different from that which obtains in other countries. It is its very peculiarity that lends to it its potency.

JUDGE-MADE LAW.

I read the other day the reflections of a foreign thinker on what seemed to him the barbarism of the entire system of English jurisprudence, in its essence judge-made and not based on the scientific foundation of a code. I do not wonder at such reflections. There is a gulf fixed between the method of a code and such procedure as that of Chief Justice Holt in *Coggs* v. *Bernard*, of Chief Justice Pratt in *Armory* v. *Delamirie*, and of Lord Mansfield when he defined the count for money had and received. A stranger to the spirit of the law as it was evolved through centuries in England will always find its history a curious one. Looking first at the early English common law, its most striking feature is the enormous extent to which its founders concerned themselves with remedies before settling the substantive rules for breach of which the remedies were required. Nowhere else, unless perhaps in the law of ancient Rome, do we see such a spectacle of legal writs making legal rights. Of the system of the common law there is a saying of Mr. Justice Wendell Holmes which is profoundly true :—' The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intentions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.' As the distin-

guished writer whom I have quoted tells us, we cannot, without the closest application of the historical method, comprehend the genesis and evolution of the English common law. Its paradox is that in its beginnings the forms of action came before the substance. It is in the history of English remedies that we have to study the growth of rights. I recall a notable sentence in one of Sir Henry Maine's books. 'So great,' he declares, 'is the ascendency of the law of actions in the infancy of Courts of Justice that substantive law has at first the look of being gradually secreted in the interstices of procedure.' I will add to his observation this: that all our reforms notwithstanding, the dead hands of the old forms of action still rest firmly upon us. In logic the substantive conceptions ought of course to have preceded these forms. But the historical sequence has been different, for reasons with which every competent student of early English history is familiar. The phenomenon is no uncommon one. The Time Spirit and the Spirit of Logical Form do not always, in a world where the contingent is ever obtruding itself, travel hand in hand. The germs of substantive law were indeed present as potential forces from the beginning, but they did not grow into life until later on. And therefore forms of action have thrust themselves forward with undue prominence. That is why the understanding of our law is, even for the practitioner of to-day, inseparable from knowledge of its history. As with the common law so it is with equity. To know the principles of equity is to know the history of the Courts in which it has been administered, and especially the history of the office which at present I chance myself to hold. Between law and equity there is no other true line of demarcation. . . . It is by no accident that among Anglo-Saxon lawyers the law does not assume the form of codes, but is largely judge-made. We have statutory codes for portions of the field which we have to cover. But these statutory codes come not at the beginning but at the end. For the most part the law has already been made by those who practise it before the codes embody it. Such codes with us arrive only with the close of the day, after its heat and burden have been borne and when the journey is already near its end.

LAWYERS AND PUBLIC AFFAIRS.

I have spoken of a spirit and of traditions which have been apparent in English law. But they have made their influence felt elsewhere. My judicial colleagues in the province of Quebec administer a system which is partly embodied in a great modern code and partly depends on old French law of the period of Louis XIV. They apply, moreover, a good deal of the public and commercial law

of England. The relation of the code to these systems has given rise to some controversies. What I have gathered, however, when sitting in the Judicial Committee of the Privy Council, is that a spirit not very different from that of the English lawyers has prevailed in Quebec. The influence of the Judges in moulding the law, and of legal opinion in fashioning the shape which it should take, seem to me to have been hardly less apparent in Quebec than elsewhere in Canada. Indeed, the several systems of our group of nations, however these systems have originated, everywhere show a similar spirit and disclose the power of our lawyers in creating and developing the law as well as in changing it—a power which has been more exercised outside the Legislature than within it. It is surely because the lawyers of the New World have an influence so potent and so easily wielded that they have been able to use it copiously in a wider field of public affairs than that of mere jurisprudence. It is very striking to the observer to see how many of the names of those who have controlled the currents of public opinion in the United States and Canada alike have been the names of famous lawyers. I think this has been so partly because the tradition and spirit of the law were always what I have described and different from that on the Continent of Europe. But it has also been so because, in consequence of that tradition and spirit, the vocation of the lawyer has not, as on the Continent of Europe, been that of a segregated profession of interpreters, but a vocation which has placed him at the very heart of affairs. In the United Kingdom this has happened in the same fashion, yet hardly to so great an extent, because there has been competition of other and powerful classes whose tradition has been to devote their lives to a Parliamentary career. But in the case of all three nations it is profoundly true that, as was said by the present President of the United States in 1910, in an address delivered to this very association, 'the country must find lawyers of the right sort and the old spirit to advise it, or it must stumble through a very chaos of blind experiment.' 'It never,' he went on to add, 'needed lawyers who are also statesmen more than it needs them now—needs them in its Courts, in its Legislatures, in its seats of executive authority—lawyers who can think in the terms of society itself.' This at least is evident, that, if you and I belong to a great calling, it is a calling in which we have a great responsibility. We can do much to influence opinion, and the history of our law and the character of our tradition render it easy for us to attain to that unity in habit of thought and sentiment which is the first condition of combined action.

THE TRIBUNAL OF CONSCIENCE.

Besides the rules and sanctions which belong to law and legality there are other rules with a different kind of sanction which also influence conduct. The tribunal of conscience is a private one and its jurisdiction is limited to the individual whose conscience it is. The moral rules enjoined by the private conscience may be the very highest of all. But they are enforced only by an inward and private tribunal. Their sanction is subjective, and not binding in the same way on all men. The very loftiness of the motive which makes a man love his neighbour more than himself, or sell all his goods in order that he may obey a great and inward call, renders that motive in the highest cases incapable of being made a rule of universal application in any positive form. And so it was that the foundation on which one of the greatest of modern moralists, Immanuel Kant, sought to base his ethical system had to be revised by his successors. For it was found to reduce itself to little more than a negative and, therefore, barren obligation to act at all times from maxims fit for law universal, maxims which, because merely negative, turned out to be inadequate as guides through the field of daily conduct. In point of fact, that field is covered in the case of the citizen only to a small extent by law and legality on the one hand and by the dictates of the individual conscience on the other.

'SITTLICHKEIT.'

There is a more extensive system of guidance which regulates conduct, and which differs from both in its character and sanction. It applies, like law, to all the members of a society alike, without distinction of persons. It resembles the morality of conscience in that it is enforced by no legal compulsion. In the English language we have no name for it, and this is unfortunate, for the lack of a distinctive name has occasioned confusion both of thought and of expression. German writers have, however, marked out the system to which I refer and have given it the name of 'Sittlichkeit.' . . . 'Sittlichkeit' is the system of habitual or customary conduct, ethical rather than legal, which embraces all those obligations of the citizen which it is 'bad form' or 'not the thing' to disregard. Indeed, regard for these obligations is frequently enjoined merely by the social penalty of being 'cut' or looked on askance. And yet the system is so generally accepted and is held in so high regard that no one can venture to disregard it without in some way suffering at the hands of his neighbours for so doing. If a man maltreats his wife and children, or habitually jostles his fellow-citizen in the street, or does things flagrantly selfish or in bad taste, he is pretty sure to find

himself in a minority and the worse off in the end. But not only does it not pay to do these things, but the decent man does not wish to do them. A feeling analogous to what arises from the dictates of his more private and individual conscience restrains him. He finds himself so restrained in the ordinary affairs of daily life. But he is guided in his conduct by no mere inward feeling, as in the case of conscience. Conscience and, for that matter, law overlap parts of the sphere of social obligation about which I am speaking. A rule of conduct may, indeed, appear in more than one sphere, and may consequently have a two-fold sanction. But the guide to which the citizen mostly looks is just the standard recognized by the community—a community made up mainly of those fellow-citizens whose good opinion he respects and desires to have. He has everywhere round him an object-lesson in the conduct of decent people towards each other and towards the community to which they belong. Without such conduct and the restraint which it imposes there could be no tolerable social life, and real freedom from interference would not be enjoyed. It is the instinctive sense of what to do and what not to do in daily life and behaviour that is the source of liberty and ease. And it is this instinctive sense of obligation that is the chief foundation of society, Its reality takes objective shape and displays itself in family life and in our other civic and social institutions. . . .

The system of ethical habit in a community is of a dominating character, for the decision and influence of the whole community is embodied in that social habit. Because such conduct is systematic and covers the whole of the field of society, the individual will is closely related by it to the will and spirit of the community. And out of this relation arises the power of adequately controlling the conduct of the individual. If this power fails or becomes weak, the community degenerates and may fall to pieces. Different nations excel in their 'Sittlichkeit' in different fashions. The spirit of the community and its ideals may vary greatly. There may be a low level of 'Sittlichkeit,' and we have the spectacle of nations which have even degenerated in this respect. It may possibly conflict with law and morality, as in the case of the duel. But when its level is high in a nation we admire the system, for we see it not only guiding a people and binding them together for national effort, but affording the most real freedom of thought and action for those who in daily life habitually act in harmony with the general will. Thus we have in the case of a community, be it the city or be it the State, an illustration of a sanction which is sufficient to compel observance of a

rule without any question of the application of force. This kind of sanction may be of a highly-compelling quality, and it often extends so far as to make the individual prefer the good of the community to his own. The development of many of our social institutions, of our hospitals, of our universities, and of other establishments of the kind shows the extent to which it reaches and is powerful. . . . We find within the single State the evidence of a sanction which is less than legal but more than merely moral, and which is sufficient, in the vast majority of the events of daily life, to secure observance of general standards of conduct without any question of resort to force. If this is so within a nation, can it be so as between nations?

A General Will.

Can nations form a group or community among themselves within which a habit of looking to common ideals may grow up sufficiently strong to develop a general will, and to make the binding power of these ideals a reliable sanction for their obligations to each other? There is, I think, nothing in the real nature of nationality that precludes such a possibility. A famous student of history has bequeathed to us a definition of nationality which is worth attention. I refer to Earnest Renan, of whom George Meredith once said to me, while the great French critic was still living, that there was more in his head than in any other head in Europe. Renan tells us that 'Man is enslaved neither by his race, nor by his language, nor by his religion, nor by the course of rivers, nor by the direction of mountain ranges. A great aggregation of men, sane of mind and warm of heart, creates a moral consciousness which is called a nation.' Another cute critic of life, Matthew Arnold, citing one still greater than himself, draws what is in effect a deduction from the same proposition. 'Let us,' he says, 'conceive of the whole group of civilised nations as being, for intellectual and spiritual purposes, one great confederation, bound to a joint action and working towards a common result; a confederation whose members have a due knowledge both of the past, out of which they all proceed, and of each other. This was the ideal of Goethe, and it is an ideal which will impose itself upon the thoughts of our modern societies more and more.' But while I admire the faith of Renan and Arnold and Goethe in what they all three believed to be the future of humanity, there is a long road yet to be travelled before what they hoped for can be fully accomplished. Grotius concludes his great book on War and Peace with a noble prayer:—'May God write,' he says, 'these lessons—He Who alone can—on the hearts of all those who have the affairs of Christendom in their hands. And may

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He give to those persons a mind fitted to understand and to respect rights, human and divine, and lead them to recollect always that the ministration committed to them is no less than this, that they are the Governors of Man, a creature most dear to God.'

THE WORLD AND WAR.

The prayer of Grotius has not yet been fulfilled, nor do recent events point to the fulfilment as being near. The world is probably a long way off from the abolition of armaments and the peril of war. For habits of mind which can be sufficiently strong with a single people can hardly be as strong between nations. There does not exist the same extent of common interest, of common purpose, and of common tradition. And yet the tendency, even as between nations that stand in no special relation to each other, to develop such a habit of mind is in our time becoming recognisable. There are signs that the best people in the best nations are ceasing to wish to live in a world of mere claims and to proclaim on every occasion 'Our country, right or wrong.' There is growing up a disposition to believe that it is good, not only for all men but for all nations, to consider their neighbours' point of view as well as their own. There is apparent at least a tendency to seek for a higher standard of ideals in international relations. The barbarism which once looked to conquest and the waging of successful war as the main object of statesmanship seems as though it were passing away. There have been established rules of international law which already govern the conduct of war itself, and are generally observed as binding by all civilised people, with the result that the cruelties of war have been lessened. If practice fails short of theory, at least there is to-day little effective challenge of the broad principle that a nation has as regards its neighbours duties as well as rights. It is this spirit that may develop as time goes on into a full international 'Sittlichkeit.' But such development is certainly still easier and more hopeful in the case of nations with some special relation than it is within a mere aggregate of nations. At times a common interest among nations with special relations of the kind I am thinking of gives birth to a social habit of thought and action which, in the end crystallises into a treaty, a treaty which in its turn stimulates the process that gave it birth. We see this in the case of Germany and Austria and in that of France and Russia. Sometimes a friendly relationship grows up without crystallising into a general treaty. Such has been the case between my own country and France. We have no convention excepting one confined to the settlement of old controversies over

specific subjects—a convention which has nothing to do with war. None the less, since in that convention there was embodied the testimony of willingness to give as well as to take, and to be mutually understanding and helpful, there has arisen between France and England a new kind of feeling which forms a real tie. It is still young and it may stand still or diminish. But equally well it may advance and grow and it is earnestly to be hoped that it will do so. Recent events in Europe and the way in which the Great Powers have worked together to preserve the peace of Europe, as if forming one community, point to the ethical possibilities of the group system as deserving of close study by both statesmen and students. The 'Sittlichkeit' which can develop itself between the peoples of even a loosely connected group seems to promise a sanction for international obligation which has not hitherto so far as I know attracted attention in connection with international law. But if the group system deserves attention in the cases referred to how much more does it call for attention in another and far more striking case.

ANGLO-AMERICAN PEACE.

In the year which is approaching a century will have passed since the United States and the people of Canada and Great Britain terminated a great war by the peace of Ghent. On both sides the combatants felt that war to be unnatural and one that should never have commenced. And now we have lived for nearly a hundred years, not only in peace, but also, I think, in process of coming to a deepening and yet more complete understanding of each other, and to the possession of common ends and ideals—ends and ideals which are natural to the Anglo-Saxon group and to that group alone. It seems to me that within our community there is growing an ethical feeling which has something approaching to the binding quality of which I have been speaking. Men may violate the obligations which that feeling suggests but by a vast number of our respective citizens it would not be accounted decent to do so. For the nations in such a group as ours to violate these obligations would be as if respectable neighbours should fall to blows because of a difference of opinion. We may disagree on specific points, and we probably shall, but the differences should be settled in the spirit and in the manner in which citizens usually settle their differences. The new attitude which is growing up has changed many things and made much that once happened no longer likely to recur. I am concerned when I come across things that were written about America by British novelists only 50 years ago, and I doubt not

that there are some things in the American literature of days gone past which many here would wish to have been without. But now that sort of writing is happily over, and we are realising more and more the significance of our joint tradition and of the common interests which are ours. It is a splendid example to the world that Canada and the United States should have nearly 4,000 miles of frontier practically unfortified. As an ex-War Minister who knows what a saving in unproductive expenditure this means, I fervently hope that it may never be otherwise. But it is not merely in external results that the pursuit of a growing common ideal shows itself when such an ideal is really in men's minds. It transforms the spirit in which we regard each other, and it gives us faith in each other :—

Why, what but faith do we abhor
And idolise each other for—
Faith in our evil or our good,
Which is or is not understood
Aright by those we love or those
We hate, thence called our friends or foes.

I think that for the future of the relations between the United States on the one hand and Canada and Great Britain on the other those who are assembled in this great meeting have their own special responsibility. We who are lawyers of the New World and of the Old Mother Country possess, as I have said to you, a tradition which is distinctive and peculiarly our own. We have been taught to look on our system of justice not as something that waits to be embodied in abstract codes before it can be said to exist, but as what we ourselves are progressively and co-operatively evolving. And our power of influence is not confined to the securing of municipal justice. We play a large part in public affairs and we influence our fellow-men in questions which go far beyond the province of the law, and which extend in the relations of society to that 'Sittlichkeit' of which I have spoken. In this region we exert much control. If then, there is to grow up among the nations of our group, and between that group and the rest of civilisation, a yet further development of 'Sittlichkeit' has not our profession special opportunities of influencing opinion which are coupled with a deep responsibility? To me, when I look to the history of our calling in the three countries, it seems that the answer to this question requires no argument and admits of no controversy. It is our very habit of regarding the law and the wider rules of conduct which lie beyond the law as something to be moulded afresh as society develops, and

to be moulded best if we co-operate steadily that gives us an influence perhaps greater than is strictly ours, an influence which may n affairs of the State be potently exercised for good or for evil.

THE ANGLO-SAXON GROUP.

This, then, is why as a lawyer speaking to lawyers, I have a strong sense of responsibility in being present here to-day, and why I believe that many of you share my feeling. A movement is in progress which we, by the character of our calling, as judges and as advocates, have special opportunities to further. The sphere of our action has its limits, but at least it is given to us as a body to be the counsellors of our fellow-citizens in public and in private life alike. I have before my mind the words which I have already quoted of the present President of the United States, when he spoke of 'lawyers who can think in the terms of society itself.' And I believe that if, in the language of yet another President, in the famous words of Lincoln, we as a body in our minds and hearts 'highly resolve' to work for the general recognition by society of the binding character of international duties and rights as they arise within the Anglo-Saxon group, we shall not resolve in vain. A mere common desire may seem an intangible instrument and yet, intangible as it is it may be enough to form the beginning of what in the end can make the whole difference. Ideas have hands and feet, and the ideas of a congress such as this may affect public opinion deeply. It is easy to fail to realise how much an occasion like the assemblage in Montreal of the American Bar Association, on the eve of a great international centenary, can be made to mean and it is easy to let such an occasion pass with a too timid modesty. Should we let it pass now I think a real opportunity for doing good will just thereby have been missed by you and me. We need say nothing; we need pass no cut-and-dried resolution. It is the spirit and not the letter that is the one thing needful.

NEW PRINCIPLES AND IDEALS.

I do not apologise for having trespassed on the time and attention of this remarkable meeting for so long or for urging what may seem to belong more to ethics than to law. We are bound to search after fresh principles if we desire to find firm foundations for a progressive practical life. It is the absence of a clear conception of principle that occasions some at least of the obscurities and perplexities that beset us in the giving of counsel and in following it. On the other hand, it is futile to delay action until reflection has cleared up all our difficulties. If we would learn to swim we must first enter the water. We must not refuse to begin our journey

until the whole of the road we may have to travel lies mapped out before us. A great thinker declared that it is not philosophy which first gives us the truth that lies to hand around us, and that mankind has not to wait for philosophy in order to be conscious of this truth. Plain John Locke put the same thing in more homely words when he said that 'God has not been so sparing to men to make them two-legged creatures, and left it to Aristotle to make them rational.' Yet the reflective spirit does help, not by furnishing us with dogmas or final conclusions, or even with lines of action, that are always definite, but by the insight which it gives, an insight that develops in us what Plato called the 'synoptic mind'—the mind that enables us to see things steadily as well as to see them whole. And now I have expressed what I had in my mind. Your welcome to me has been indeed a generous one, and I shall carry the memory of it back over the Atlantic. But the occasion has seemed to me significant of something beyond even its splendid hospitality. I have interpreted it, and I think not wrongly, as the symbol of a desire that extends beyond the limits of this assemblage. I mean the desire that we should steadily direct our thoughts to how we can draw into closest harmony the nations of a race in which all of us have a common pride. If that be now a far-spread inclination, then indeed may the people of three great countries say to Jerusalem, 'Thou shalt be built,' and to the Temple, 'Thy foundation shall be laid.'—*Ibid.*

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Judges and the Democracy.—No conference of trade unionists is unfortunately, now complete without an attack upon the judges, and the Trade Unions Congress which has just completed its deliberations at Manchester was no exception to the rule. Some of the members of the Congress complained that the summings-up of certain judges in trade-union cases have been biassed. Well, that is invariably the attitude of the litigant who is ill-tempered as well as unsuccessful, and the criticism which a disappointed suitor passes upon the Bench is usually as groundless as his cause of action. These attacks upon the Bench, however, raise a larger question. In what way would the Labour agitators who indulge in these flippant criticisms of our independent judges like to see our judicial system altered? The address which Mr. Taft delivered before the American Bar Association at Montreal is scarcely calculated to make them desire the adoption in England of the American system of an elective judiciary. The ex-President of the United States, who can hardly be said to be wanting in democratic sympathies, boldly

'avowed himself an opponent of the American system of electing State judges and in favour of the British system of life tenure.' It is not merely that the system of election impairs the dignity and authority of the Bench. 'Appointed judges,' says Mr. Taft, who speaks both as a jurist and a statesman, 'are more discriminating and more responsive to the needs of the community than those chosen directly by the electorate, because the Executive is better qualified to select the greatest experts.' Do the critics of the Bench desire judges to be popular in the vulgar sense? It is quite true, as Mr. Taft says, that judges can be really popular without being appointed by popular election—popular, that is, in the sense of commanding, not the regard of any particular class, but the confidence of the community as a whole. 'Gentlemen, you will forgive me,' said Mr. Justice Cresswell when a murmur of applause came from the jury-box while he was addressing its occupants. 'I daresay you meant it very kindly; but, believe me, the administration of justice is in great danger when applause in Court becomes grateful to a judge's ears.' The administration of justice will probably be in even greater danger whenever the names of judges are acclaimed at the Trade Unions Congress. The way in which the Workmen's Compensation Act has been administered by every section of the Judiciary, from the County Court to the House of Lords, is sufficient to show that the judges have no bias against the working classes, while the way in which certain trade-union disputes have been dealt with merely indicates that the Bench recognises that its duty is to the whole community and not to a class.—*Ibid.*

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Law and Politics.—Lord Loreburn's pronouncement on the government of Ireland question, which his call for a conference of all parties to secure a settlement by consent, or failing that a clearing of the issues, will remain historic whether it achieves its immediate purpose or not. In the midst of the general groping and doubt, it reveals, as with a flash, the judicial mind in operation and the value of the lawyer in politics. It is a striking exemplification by the ex-Lord Chancellor of the lesson conveyed by his successor through the American Bar Association to the legal world beyond the seas, that 'it is our very habit of regarding the law as something to be moulded afresh as society develops, *and to be moulded best if we co-operate steadily,* that gives us an influence which may in affairs of the State be potently exercised for good or for evil.' As Lord Haldane characteristically observed, the reflective spirit which the vocation of the lawyer demands does help, by the insight which

it gives, to develope what Plato called the 'synoptic mind'—the mind that enables us to see things steadily and to see them whole. There is something more than this, too, in the vocation of the lawyer as practised in countries which have come under the English influence—it is no segregated profession of interpreters of the law, but a calling which has placed him at the very heart of affairs, one which compels him 'to think in the terms of society itself.' The present President of the United States, to whom we owe that phrase, saw clearly enough when he said to the same Association, 'the country must find lawyers of the right sort, and the old spirit to advise it, or it must stumble through a very chaos of blind experiment.' In Lord Loreburn we have one of those lawyers, and in the light he has thrown on a difficult situation he has shed lustre on the profession to which he belongs by the application to a natural crisis of those very qualities which the law developes.—*Ibid.*

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The International Law Association's Conference.—The International Law Association is holding its biennial conference at Madrid during the first week in October, and though there is something pathetic about the meeting because of the assassination of the Premier, Senor Canalejas, who was to have been its president, the proceedings promise to be more than usually interesting. Spain has shown herself anxious of recent years to further the study of international law by every means in her power. In 1911 the Institut de Droit International held its conference at Madrid; and on this occasion the late Minister for Foreign Affairs will preside over the gathering. Spanish America has already contributed several notable names to the annals of international law. Gallo, the author of one of the most famous foreign treatises on the subject, and Dr. Drago, who has played a prominent part in the Hague tribunal, both came from the Argentine Republic and the part which the Central and South American States have taken in the development of international relations is one of the most remarkable features of the world movement. This Conference has, therefore, a particular interest in drawing into the deliberations of the judges and lawyers of the chief European countries the representatives of Spain and the countries which derive their legal systems from her. Among the subjects of special interest which appear on the programme are 'The Effect of War on Private Contracts,' upon which Mr. Leslie Scott, among others, is to read a paper; 'The Law of Avitation' and 'Comparative Civil Procedure and Evidence,' on which respectively Mr. Perowne and Mr. Todd will present reports; 'Inter-

national Labour Laws,' to be dealt with by Mr. Scott-Duckers; and 'Jurisdiction in Divorce,' on which Mr. Justice Phillimore will speak with special authority. There are proposals on matters which have become hardy biennials at the conferences of the Association, such as 'General Average,' 'International Arbitration,' and 'Extradition.' Progress towards an international agreement on all these questions is slow; but the conferences of bodies such as the Institut and the Association do prepare the way for the action of Governments, and serve, therefore, a special purpose in the advancement of law and morality.—*Ibid.*

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The Defence of Poor Prisoners.—The legislation of New Zealand is generally so much in advance of that of the Mother Country that it is interesting to find that the defence of poor prisoners only received attention there at the end of last year. The regulations putting the Act into force were published recently in the *New Zealand Gazette*. In order to obtain the benefit of the Act the prisoner must show that he is not able to borrow the money for his defence, or to obtain such money from his relatives or friends, and that he is not able to procure such legal aid without prepayment of the costs. The inquiry into the means of the prisoner is to be made by the Magistrate in private. If the prisoner has been represented by counsel in the preliminary proceedings before the Magistrates that fact is *prima facie* evidence that the accused is not without means within the meaning of the statutory regulations. Before granting a certificate for legal aid the magistrate must be satisfied that the prisoner has a defence which may reasonably and properly be set up upon his trial. The counsel is to be chosen by the judge from a list kept for that purpose. The Registrar of every Registry of the Supreme Court is to request the Council of the Law Society of the district wherein the Registry is situated from time to time to ascertain and to forward to him the names of persons who, in the opinion of the Council, are fit and proper and who are qualified and willing to act as counsel for accused persons. The list is to be approved by the judge, who may remove or add names. The fees to be paid to counsel for the defence are to be the same as those allowed to the local Crown solicitor for the prosecution of the same person on the same charge. Provision is also made for the expenses of witnesses required by the defence. Whatever may be said of it from other points of view, here is, at all events, a simple and intelligible scheme which may be deserving of consideration on the amendment of our own inadequate rules.—*Ibid.*

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RESUMPTION OF COHABITATION

Two important points of Separation Law which are not usually known were acted upon by the Kingston Justices in the case of Alfred W. J. Pasely this week (September 15). A dissenting minister had been separated from his wife by a magisterial order which directed him to pay alimony. Subsequently, the spouses resumed cohabitation, but the husband did not apply to the Court to annul the separation order. He ceased, however, to pay the weekly contribution ordered, and some time later his wife became chargeable to the Union. Two summonses, one criminal and the other civil, were taken out against him. The criminal summons charged him under the Vagrancy Act, 1824, S. 3, with neglecting his family, so that it became chargeable on the Union; it was held recently in *Shaftesbury Union* v. *Brockway* (77 J. P. 120) that the existence of a separation order does not prevent a conviction for the non-maintenance of the wife under the Vagrancy Act. The civil summons was for arrears under the separation order. The question as to whether such an order is automatically discharged by resumption of cohabitation was considered by the Divisional Court in *Mathews* v. *Mathews* [1912] (3 K. B. 91); where Lord Alverstone and Mr. Justice Pickford were of opinion that it was not automatically discharged, whereas Mr. Justice Avory took the view that it was terminated by subsequent cohabitation without the necessity of an application to the Bench. These judicial opinions, however, are only *obiter dicta*, since that case was in fact decided on a different ground. Stone's Justices' Manual takes the view of Mr. Justice Avory and advises justices to exercise their discretion in favour of the husband in such a case. The Kingston Bench, however, elected to follow the *obiter dicta* expressed by the majority of the Court, and made an order of imprisonment in default of the arrears. Upon the criminal summons, also, they convicted the defendant.—*Ibid.*

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The New Supreme Court Rules.—We publish in another column the full text of the new Rules which are to come into force next month, indicating by italics as nearly as possible—some of the Rules are only the old ones re-drafted—the alterations in the existing practice. The Rules deal with three subjects: (1) Payment into Court (Order XXII); (2) Applications for new trial (Order XXXIX); and (3) Time for appealing (Order LVIII). Under the first head an omission to which we drew attention when the draft Rules were gazetted in July has been made good—the old Rules

1 to 11 of Order XXII. are formally annulled and the present Rules take their place. The only alterations are in Rules 6, 7, 9, and 11, with the addition of a new Rule (8A) The main effect of the alterations and additions is that (*a*) where money has been paid into Court with a denial of liability, there may be a set-off of the damages or costs allowed to either party before payment out is ordered; (*b*) a plaintiff who does not accept money paid in with a denial of liability but proceeds to trial and does not recover more than the sum paid in, is not, ordinarily, to be allowed his costs of the issue as to liability; (*c*) when there are joint defendants and money is paid in by one or some of them, if the plaintiff accepts it all further proceedings on the joint cause of action are to be stayed and the Court may make such order as may appear just as to the costs of the other defendants; and a similar discretion as to the costs of the co-defendants may be exercised if the plaintiff proceeds to trial and recovers less than the amount paid in. In the Rules as to applications for new trial under Order XXXIX, the alterations are mainly of a drafting character, but an important amendment is that contained in Rule 4, by which the time for service of the notice of motion for new trial is extended in all cases from eight days after the trial in London or Middlesex, or seven days after the last day of the sittings elsewhere, to six weeks after the trial or, where there has been an adjournment for further consideration, after the judgment. In practice the old rule, with its short terms for appeal notices, was applied only to motions for new trial of cases tried with a jury, and cases tried by a judge without a jury were treated as ordinary appeals under Order LVIII., Rule 15, which allows three months for all final appeals. This excessive period is reduced by the new Rules to the same term of six weeks which applies to the other cases, and so something more of consistency is introduced into the practice.—*Ibid.*

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Witnesses' Recognizances.—A lacuna in our law of procedure which causes much embarrassment in practice is strikingly illustrated by a point which arose at the Lancaster Petty Sessions last week. A prisoner accused of larceny and false pretences was committed for trial at Quarter Sessions, and in accordance with law the witnesses for the prosecution were bound over in their own recognizances to appear at the trial to give evidence. One of these, an American artisan temporarily in this country and about to return to America at once, declined at first to be bound over. He would lose his job in America as the result of the delay in returning, he said; and the

provision of lodging in the meantime by the Crown was not an equivalent. Ultimately, of course, he had to enter into the recognizances, since refusal to do so would have compelled the Bench to commit him to prison until the trial; for the commitment of a case to Quarter Sessions or Assizes involves two things: the prisoner is committed to prison unless he gives bail, and so are the witnesses unless they give their own bail by entering into recognizances. Indeed, until recently, the witnesses were compelled to find security for their appearance at the trial and in default were committed to prison. Ludicrous results often followed in practice: Serjeant Ballantine mentions one in his 'Experiences.' A Turk visiting London was robbed by a man in Farringdon Street; the magistrate committed both to prison pending trial, the Turk as prosecutor and witness, the robber as defendant. The latter found bail and promptly decamped; the unhappy Turk had no friends, could find no security, and so remained in prison until, after numerous adjournments, the Treasury gave up hopes of recapturing the robber and consented to the release of the prosecutor's recognizances. While abuses of this kind no longer occur, it is certainly a hardship that a witness about to go abroad should be detained in this country to appear at a trial for petty larceny. At present, however, this is necessary, since the depositions taken before the magistrate can only be used in lieu of the witness himself when the latter either dies, or is too ill to attend, or is induced by the prisoner to flee the country. In the case of all trials not involving capital punishment, it is suggested, any bench of justices should be empowered in a proper case, upon application by the witness, to certify that the latter has been compelled by urgent reasons of necessity to go abroad, in which case his deposition should be made available at the trial.—*Ibid.*

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Week-end Tickets.—A point of considerable importance to the travelling public, although the amount at stake was only one shilling and sixpence, came up on Tuesday in the City of London Court (*Cohen* v. *London, Brighton & South Coast Railway Company*). The plaintiff took a week-end ticket to Brighton from London Bridge on a Friday, and desired to return on Saturday, but was not allowed to do so without payment of the excess fare. He paid that sum under protest and now sued to recover it. The defence of the company was that the ticket was not available for return on Saturday; the inward half could only be sued on Sunday, Monday, or Tuesday. The condition, in fact, was actually printed on the face of the ticket; but the plaintiff contended that, as his attention

had not been called to the condition when he took his ticket, the condition was not binding upon him. He seems to have advanced two other arguments: First, that such a limitation of the user is inconsistent with the main purpose of the ticket, namely, its availability for week-enders, and is, therefore, void on the well-known principle that a condition repugnant to the essential object of a contract is invalid; secondly, that even if not inconsistent and void for repugnancy, nevertheless such a condition was 'unreasonable' and on that ground void. These two latter arguments do not seem very convincing; but the purely technical argument that notice of the conditions must be given to the ticket-holder in an unmistakeable manner has more to be said for it. It is quite clear, of course, that a person who takes a ticket with conditions upon it, of which clear notice is given him, is bound by them even if he does not read the document (per Stephen, J., in *Watkins* v. *Rymill* [1882].) But such notice must comply with certain rules. Either (1) the ticket-holder's attention must be expressly called to it; or (2) the condition must be on the face of the contract, or (3) it must be upon some document connected with the ticket to which attention is unmistakeably called upon the face of the ticket (*Henderson* v. *Stevenson* [1878].) Again, the sufficiency of the notice in the circumstances is a question of fact, whereas the reasonableness of the condition is a question of law (*Richardson* v. *Rowntre* [1904]). In the present case the deputy-Registrar held that the notice was not sufficient, and that, therefore, the condition was not binding upon the passenger—a conclusion which we think, is not entirely free from doubt.—*Ibid.*

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INTERNATIONAL LAW ASSOCIATION

Among the chief business of the International Law Association, which began its Congress in Madrid on Wednesday, is the consideration of the Reports of three Committees appointed at previous meetings to deal respectively with International Systems of Evidence and Procedure, the Law of Aviation, and Jurisdiction in Divorce. Below will be found the more important portions of the Reports dealing with the two first-named subjects:—

EVIDENCE AND PROCEDURE

The Committee on International Systems of Evidence and Procedure, whose Report is signed by Mr. Ernest Todd, states that in reply to a 'questionnaire' they sent out in November last they received communications from the United States of America, Austria, Belgium, Canada (Quebec), Denmark, France, Germany,

Holland, Italy, Norway, and Spain. The following are some of the questions put by the Committee with their comments upon the answers they received.

TRIAL BY JURY.

Are (*a*) civil cases, (*b*) criminal cases, or (*c*) correctional cases tried with a jury, and is the jury regarded with favour? Of what number is the jury composed, and how is it selected? Has the defendant any right of challenge?

The only country of those named in which all kinds of civil and criminal cases are tried by jury is the United States of America. In the province of Quebec, Canada, in civil and commercial cases where more than S400 is claimed, and in France in cases of compulsory purchase of land, where the amount to be paid to the person to be expropriated has to be assessed, a trial by jury may be had. In all the other eight cases juries may only be summoned in criminal cases, and in Spain this right is limited to very serious cases, *ex. gr.*, sedition, murder, arson, forgery, &c. In eight of the countries the jury consists of twelve persons (reducible in the U. S. A. to six where the matter to be tried is of trivial importance), in the cases of Denmark and Holland no cases are tried by jury, although in the case of Denmark the jury in criminal cases will be introduced by a law taking effect in 1916, whilst in Norway the criminal jury consists of ten. There is in all the nine countries referred to in which they have juries some right of challenge, and the panel is selected either by some public official (like a Sheriff), or by persons deputed for the purpose by the City of County Councils, and the jurymen are selected from residents in the different districts, either townsfolk, land-owners, or peasants. From the replies we have received we gather that the system of trial of criminal cases by jury is approved of in Austria, Belgium, Canada, and France, whilst in Germany it is disliked by lawyers but approved of by the people, and in Denmark and Holland it is looked upon with disfavour. Owing to the prevalence of written instead of verbal proof in most continental codes of civil procedure, the jury appears to us to be unsuitable as the tribunal for the trial of civil cases, and, indeed, its place is supplied to a certain extent by the number of judges who sit for the trial of causes; speaking generally it is only under systems framed upon the English model of civil procedure in which the jury can usefully find a place. Whether it is a desirable institution in all criminal cases must depend so largely upon the sentiments and traditions of the people that we feel we are not justified in expressing an opinion as to the desirability of its uni-

versal application. We wish, however, to point out that in Spain—as has been found to be the case in Ireland in cases with a political aspect—jurors are apt to take a perverted or over lenient view of the crime imputed to the prisoner or of the motives of the prosecution.

The Expenses of Litigation

What is the average cost of an action to recover a sum of money exceeding 50*l*? (1) on a bill of exchange, promissory note, cheque bond or simple contract; (2) on mortgage or (3) to recover possession of real property; (4) to prevent infringement of a patent or copyright; (5) to take or obtain mortgaged property; (6) to restrain the infringement of a right of water, light or air; (7) to recover damages for libel or slander; (8) to obtain a divorce; (9) to upset a will; (10) to recover a sum of 500*l*. on a contract to build a house or other structure; (11) to recover a sum of money exceeding 100*l*. for freight or on the charterparty of a vessel; or (12) for damages for a collision at sea; and state whether such costs would include the fees of the Court, of the *Avoue*, of the advocate, and all other necessary costs if any.

We have only received detailed answers to these questions from Austria and France. In the case of each of the other countries referred to above, our correspondents express a general opinion (except in the case of the U.S.A.) that the cost of litigation does not cause any appreciable dissatisfaction. In France, it will be noticed, that in important and heavy matters the expenses may run as high, in will disputes, as 800*l*., which, so far as our inquiries have enlightened us, is very high indeed for an action conducted on the lines generally ruling upon the Continent; although this figure fades into insignificance by the side of the thousands of pounds of expenses that may have to be incurred in a similar action in England. In all the countries with the exception of Austria and Germany, where the charges are fixed by an *ad valorem* tarift, the cost of litigation is low, a result contributed to largely by the procedure being written instead of oral, by the moderation of the Court fees, and by the extremely low rate of remuneration for their services paid to legal officials, bringing about as it does a low standard of expense in the administration of justice. We express no opinion as to the quality of the justice administered, but so far as our inquiries have enabled us to judge, there is no great complaint under head in any of the European countries with whose procedure this report deals.

THE FEES OF ADVOCATES.

What on an average would be the fee paid to an advocate to plead any of the above cases? (1) in the Court of First Instance; (2) in the Court of Appeal; giving a minimum and maximum. If two or more advocates are employed by the same party what proportional fees do they receive or do they all receive the same?

We have found it extremely difficult to obtain any answers to this question which throw useful light upon the subject. The amount of the fee in each case seems to depend upon a contract between the advocate and client direct, and the factors which go to determine what sum is likely to be fixed are: (1) the importance of the subject matter of the litigation; (2) the eminence of the advocate; and (3) the length and intricacy of the case. In America, France, and Belgium the scale of remuneration appears to be the highest, but in neither of these countries (except perhaps U.S.A.) do the fees in any degree approach the sums which are paid in England. In Austria, Denmark, Holland, Spain, and Norway the fees seem to be exceedingly moderate, whilst those paid in Germany and Italy are a percentage based upon an *ad valorem* charge upon the amount in dispute, a system which appears to give satisfaction.

THE EVIDENCE OF EXPERTS

How is expert or technical evidence given in civil and criminal cases?

England, U.S.A., and Canada appear to be the only countries amongst those which have given us answers to our Questionnaire where the experts are chosen freely by the parties and give their evidence *viva voce* in open court in civil cases. In each of the other nine cases, with the exception of Spain, the experts are appointed by and make their report to the Court, being paid by the Court and not directly by the parties. In Spain they are appointed by the parties, but make their report to the Court in writing. In each of the countries in which evidence is given *viva voce* by experts in civil cases, we find that the length of time consumed and expense involved is out of all proportion to any benefit which is derived from it, and we are of opinion that the simple and cheap method adopted in France and other Continental countries is quite as efficacious as the method whereby the parties appoint and the experts give their evidence *viva voce*, and is very much cheaper and more expeditious, but if the system is to work satisfactorily, the panel of experts must be a very large one, containing the names of

different experts in the multitudinous branches of the different trades or branches of expert work, and they must be chosen by the Court with complete impartiality, having full regard to their special qualifications.

INTERLOCUTORY PROCEEDINGS

How are interlocutory proceedings such as applications in regard to pleadings, taking accounts, injunctions, appointment of receivers, summary judgment in default of defence, &c., dealt with in your courts, and by what official are they dealt with?

In every country except England, it appears that interlocutory applications are dealt with by a judge, generally the judge dealing with and hearing the case. In view of our remarks under question 8, it is of interest to note that in Austria, where the occurrence of interlocutory proceedings is rare, the satisfaction with the working of civil procedure is the greatest. In England, owing to the nature and intricacy of its interlocutory procedure in civil cases, there is an enormous waste of time and money (special officers, called Masters of the Supreme Court, being appointed to deal with it), and if this were limited and what remained simplified, such a reform would go fairly far towards remedying the condition of things of which one hears so much complaint on all hands.

THE PAYMENT OF COSTS

What costs are payable by the losing to the winning party in an ordinary civil or commercial action?

In most of the countries referred to below we find that only bare necessaries, such as court fees, charges as per scale of the avoue, &c., are allowed to the successful litigant against his unsuccessful opponent, and that in each of the countries except Italy the cost incident to employing an advocate falls upon such advocate's own client. In England the burden of costs weighs very heavily on both the unsuccessful and the successful litigant, for although the former generally has to pay 'taxed costs' to the latter, these taxed costs do not cover all the expenses to which the parties are put, and very often by reason of these excess (or solicitor and client) costs the victory is a barren one to the victor and a financial death warrant to the vanquished, a result which ought not to be possible under any reasonable or logical form of procedure. On a review of all the systems which have come under our notice, it appears to us that the fairest and least objectionable is that ruling in Denmark, where in such cases as the Court awards costs to a successful litigant, it does so at the trial and by way of adding a lump sum to the judgment in favour of the successful party.

PROCEDURE IN ARBITRATION

Have you any procedure governing arbitration outside the civil and commercial tribunals? If so, what shortly are its provisions, and how are arbitral awards enforced by the Courts?

It strikes your Committee as very remarkable that in such highly organised commercial countries as U.S.A. and France, there should be no provision made by law for governing procedure in arbitration, and the enforcement of arbitral awards (this defect being shared by them with Denmark and Norway), although in Austria, Belgium, Canada, Germany, Holland, Italy, Spain, and England the fullest provision is made, both for regulating the procedure and enforcing the awards of arbitrators. In Spain, Germany, Austria, Holland, and Italy, the codes of civil procedure provide means whereby arbitral awards may be made as binding as judgments of the Courts, and enforced in the same manner, and this seems to your Committee to be the ideal method of dealing with the subject, provided that sufficient control is kept by the Court over the appointment of the arbitrators procedure followed by them in the course of their dealing with matters brought before them. Your Committee are of opinion that international commerce would be very greatly served if a treaty could be made between all the most important commercial nations of the world for enforcement of arbitral awards of other countries within their respective boundaries, and they are of opinion that inasmuch as there are methods of trial, not depending so much on local law, custom, and tradition as upon the practices of traders, that, if delegates were appointed for the purpose by each nation, that a mutually satisfactory basis of agreement could easily be reached.—*Ibid.*

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WHAT is the meaning of the word "month" was a point considered by Farwell, J., in Bruner v. Moore (1904) 73 L. J., Ch., 377. The general reply would probably be that it means a calendar month, but this is by no means correct. It is well settled that a common law the word month means a lunar month of 28 days only. But it may mean a calendar month, if the context shows that was meant, or if the surrounding circumstances at the time show such was the intention, or if the word is used in a sense peculiar to a trade or business or place—but the subsequent statements or conduct of the parties are not admissible evidence on these points, or if a statute so provides. Statute law declares the word month means a calendar month unless otherwise stated—in any Act of Parliament passed after 1850, and in bills of exchange and promis-

sory notes, and in contracts for sale of goods made since 1893, and in sentences for crime passed since 1888. Also, in any legal proceedings or any document which is part of legal procedure in the High Court (Order LXIV, rule 1), or County Court (Order LII). Also in any mercantile transaction in the City of London (Turner v. Barlow (1863), 3 F. & F., 946). Also the rule that a domestic servant may be discharged by a month's notice or a month's wages means a calendar month, and the wages are the money wages with nothing additional for board or lodging (Gordon v. Potter (1859), 1 F. & F., 644. Farwell, J., in Bruner v. Moore, held that the primary meaning of month in a document of any kind is lunar month, unless it comes under one of the foregoing exceptions, and that an option to buy an invention during six months in a contract between two commercial men was confined to six lunar months.—*The Law Students' Journal.*

* * *

A NEW departure was taken by Sir Samuel Evans in D. v. D., on 31st July. It was an undefended suit for nullity of marriage brought by the husband. It appeared that the marriage had never been consummated though a year had elapsed, and the wife had stated she would never allow it to be consummated, and had refused to submit to any medical examination. The court was asked to draw an inference of the wife's physical incapacity; but the judge refused to do this, being of opinion there was in fact no incapacity. But the judge ruled that the contract of marriage implied the willingness, as well as the capacity, to consummate it, and granted a decree of nullity on the ground that the wife had wilfully and steadfastly refused to consummate it. Thus, the fiction of law by which physical incapacity has been presumed from such a refusal is abolished, and the desired result attained by a decision based on a common-sense ground in accord with modern ideas.—*Ibid.*

* * *

THE highest tribunal in France has decided—on a prosecution for not having a light on a vehicle at night—that "night" in France means the interval between the hour of the sun setting and the sun rising. The law student who intends to cycle or motor in France should take note. In England, night has various meanings—*e. g.*, for burglary, from 9 p. m. to 6 a. m.; and for poaching, from the end of the hour after sunset to the beginning of the hour before sunrise.—*Ibid.*

* * *

A FRENCH barrister, who defended three criminals executed some time ago, finds himself in a tight corner just now. It seems the accused with a view to notoriety told him the history of their lives, and the barrister in all good faith contracted to supply a publisher with the story for a book. But now the council of the order have decided the publication would be a breach of professional secrecy; and the publisher not having got his manuscript is suing for breach of contract, and will be met with the defence of *force majeure.—Ibid.*

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A MAN was up in the municipal court a few days ago charged with "Special intoxication."

"You look like a fairly decent fellow," said the judge, "and I hate to send you to the workhouse. Suppose I gave you a suspended sentence—what would you do to deserve it?"

"I'd sign the pledge, your honor!" cried the prisoner, eagerly.

"Indeed! And for how long?"

"Why, your honor, I usually sign it for life!"—*National Corporation Reporter.*

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Sir Robert Anderson, formerly head of the Criminal Investigation Department, and author of "Criminals and Crime" amongst other works, gave a *Daily News* representative last month an interview. Sir Robert was severe on the Humanitarian League. That league, he said "had far more influence than all his Majesty's judges. The latter were perfectly clear as to what should be done but the lobbying in the House of Commons had turned the Prevention of Crimes Act in such a manner as to make the way of the transgressor easier. At the present moment there was a perfect crusade of burglaries, but it would be found that the Humanitarian League would denounce the heavy sentences passed at the old Bailey on the Berkeley Hotel thieves as a scandalous thing."—*Law Notes.*

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"Towards the young and the weak" continued Sir Robert, "I think our present methods are quite unnecessarily cruel. But when you come to a man who deliberately with money (because he cannot do it otherwise) plans one of these elaborate crimes who has a bad record, and has been convicted time and again if I were not one of those men who believe in a future life I should say, 'Knock him over the head' 'Hang him to a lamp-post like a dog.'

What can we do ? He has proved that he is like a wild beast. Cage him. Is he never to be let out again ? I should let him out at any time in the future when he looked like being a better man but I should not take his word for it."—*Ibid.*

* * *

Our Mr. Plowden does turn out some quite respectable witticisms. Many years ago he perpetrated one which should not be allowed to pass into oblivion. A witness in the celebrated Druce litigation said : " I knew the diary because it looked so very old—as if it had come out of the Ark." " Oh said Mr. Plowden " I suppose you knew it by the watermark."—*Ibid.*

* * *

The " dailies " last month made comments on a case which has recently occupied the attention of the Berlin Courts. " King " Thyssen the iron-founder, began life in humble circumstances, but is now one of the five or six richest men in Germany. His son, after incurring heavy debts, was offered certain terms by the father on the condition that these were to settle definitely the share in the father's estate that should devolve to him at death. The son maintained that the offer was considerably smaller than he was entitled to, and here lay the origin of the law suit. The son has twice lost the case, and now has appealed. Already however, the costs of the case amount to 409,750*l.*, as estimated only at the rate fixed by the regulations of Prussian procedure and as sundry expenditures are to be added to this minimum, it is estimated that the total costs have amounted to very nearly half a million sterling. When the case has been disposed of for a third time (which will be the last) costs exacted by the Court to the extent of 90,000*l.* and counsels fees amounting to 20,800*l.* will have to be added, making a total outlay of 520,550*l.* estimated at the very lowest possible figure. The basis of reckoning for this exorbitant expenditure is the amount of money in dispute. The amount here was no less than 3,750,000*l.*

There was some years ago an agitation in this country that costs should vary with the amount involved. A case like this however gives furiously to think. Solicitors who act for rich corporations would make large incomes for the litigation of corporations and moneyed men involves generally large sums. The general body of lawyers would not, we fear, do well. Much litigation involves small sums. It is, apparently, an impossible task to devise a system for payment of costs which shall prove alike satisfactory to the winner and the loser and the legal advisers of both parties. We assume,

however that in this Thyssen litigation the legal advisers on both sides are fairly content.—*Ibid.*

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Partnerships between barristers in this country are not permitted, but apparently in France, owing to the existence of lady barristers it is impossible to enforce a similar rule. Last month two barristers of the Court of Appeal, M. Gaston Straunn and Mlle. Helene Miropolsky, were married. Now assume that Madame Gaston Straunn continues to practice, practically she and her husband are in partnership. They will discuss their cases together and it may be safely assumed all fees, earned by both will go into one common fund.—*Ibid.*

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There is a celebrated counsel in practice who cannot understand figures. If he finds himself unfortunately involved in a case which makes some demands on his mathematical powers, he has invented a very pretty device for slipping out of the situation. If a judge ever asks a question on figures he replies: "My Lord I don't think it will be convenient to go into the figures; I propose therefore, to put Mr. Jones the accountant into the box at once". Name—can our readers put a name to this story ?—*Ibid.*

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Once upon a time there was a well-known Serjeant of the name of Cockle. He asked a witness, "Do you like fish" To which the witness promptly answered "Yes but not with Cockle sauce."—*Ibid.*

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Counsel (examining a witness): "You say you saw the shots fired?" Witness "Yes sir". "How near were you to the scene of the affray?" When the first shot was fired I was about ten feet from the shooter." Ten feet. Well now, tell the Court where you were when the second shot was fired. "I didn't measure the distance" Speaking approximately how far should you say?" "Well it approximated to half a mile"—*Ibid.*

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In "Anecdotes of Bench and Bar" Mr. Arthur Engelbach tells the story of a carpenter who was subpœnæd as a witness on a trial for assault. One of the counsel who was much given to browbeating

the witnesses asked him what distance he was from the parties when he saw the prisoner strike the prosecutor. The carpenter answered "Just four feet five inches and a half." "Pray tell me," said the counsel, "how is it possible you can be so very exact as to the distance?" "Why, to tell you the truth," replied the carpenter, "I thought perhaps that some fool or other might ask me, and so I measured it."—*Ibid.*

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In a lengthy judgment, the Court of Cassation at Rome has just dismissed the appeal of Professor Theresa Labriola against a decision of the Court of Appeal, which refused to enrol her among barristers authorised to practise in the law Court of Italy. The Court of Cassation has affirmed the decision of the lower Court on the grounds that the argument from the silence of the laws is untenable; that no express prohibition was necessary, but rather an express admission, to permit women to practise at the Bar; and that since the consent of the husband would be required before a wife could exercise the function of advocate, a married woman did not possess the necessary independent and free status. The husband's consent might be revoked at his will and pleasure, and it would be a strange kind of advocate (says the judgment) who, by the exercise of the husband's veto, might be silenced in the middle of her pleadings.—*Ibid.*

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It is interesting to find that Italian law requires the assent of the husband. The newspaper report does not state the reason for the necessity for this assent.—*Ibid.*

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An old story of Lord Russell is revived. In the Dublin Law Courts a little Irish boy was once to be examined as a witness. His evidence was feared by Sir Charles Russell to be damaging, so he asked the judge if the lad was not too young to be relied upon, for he might not know the nature of an oath. "Well, my boy," said the judge, "do you know what an oath is?" "Yes, your honour," replied the stripling. "Examine him further, my Lord," said Sir Charles "What is an oath?" asked the judge. "You be dammed!" said the boy.—*Ibid.*

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Lord Haldane's speech to the American Bar is one more instance of his great ability. His Lordship's knowledge is as vast

and much more accurate than any encyclopædia. His knowledge of German literature has influenced his modes of thought. He possesses a remarkable brain—by birth Anglo-Saxon, by training Teutonic. We question if any other man could have evolved the idea that "Sittlichkeit" will in the future rule nations as it rules individuals. The day will come, in his Lordship's opinion, when it will not be "good form" for nations to fight. It is now not "good form" for gentlemen to fight. In some distant future civilized nations will follow this example. His Lordship has sown the seed, it remains to be seen whether that seed will germinate. The appeal is wisely made primarily to the Anglo-Saxon nations, whose social god is "Good Form."—*Ibid.*

* * *

The International Congress on Criminal Laws held its first meeting at Copenhagen last month, and discussed the precautionary measures which should be taken against habitual criminals. The argument became rather heated, and the chairman, Professor Garcon, of Paris, had some difficulty in keeping order. A Russian delegate, Professor Wladimir Nabokoff, proposed both the punishment and the taking into custody of such criminals; while the Danish Professor Torp only proposed taking them into custody. The delegates from fifteen countries disagreed, about half agreeing with Professor Nabokoff's proposal and the other half with Professor Torp's. It was finally decided that an international committee should be appointed to settle the matter. Curious that learned professors should almost fight over a debate as to what we are to do with our habitual criminals.—*Ibid.*

* * *

All our readers do not see the *Pall Mall*. With apologies, we lift the following yarn.' A Bernese Swiss hotel keeper, who had recently concluded a lawsuit lasting for years, and who received at the close an exceedingly lengthy bill of costs, took a neat revenge upon his lawyer. The bill of costs, it should be said, was paid without demur on presentation.—*Ibid.*

* * *

The other day the lawyer had occasion to lunch at his client's hotel, and at the close of the meal the following bill of costs was presented to him :—

		Francs.
Preparing Luncheon	...	2.50
Perusing Bill of Fare	...	4
Two Consultations with the Greengrocer	...	1
Carrying up the soup	...	1
Blowing on the Soup	...	.50
Taking Fly out of Soup	...	.50
Herbs for Soup	...	1
Soup	...	2.50
Waiter bowing and scraping	...	.50
Two Consultations with the Cook	...	2
Six kinds of Meat and Vegetables	...	12.50
Saying " I hope you'll enjoy your luncheon "	...	.50
Ten Visits to the Cellar	...	10
Sundry Acts of Courtesy, &c.	...	2
Matches	...	.50
Wine and Cigars	...	8
Reading Bill of Fare aloud	...	.50
Serving Dessert	...	1
Dessert	...	7.80
Clearing the Table	...	1.50
Satisfaction of Hunger	...	.50
Wear and Tear and Breakages	...	3.50
Letting down Window shuttters	...	2
Clearing away remains of Luncheon	...	4
Salt and Touching Saltspoon	...	.50
Verifying present Bill of Costs	...	2
Surprise on receiving it	...	2
Acceptance of Bill	...	.50
Receipting same	...	.50
Wishing good-bye	...	2.70
Total	...	78.00
10 per cent. discount	...	7.80
		70.20

The lawyer, as his client had done, paid the bill without demur. —*Ibid.*

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The *Daily Mail* last month reported a case of great interest to "flat landlords," which occurred at Berlin. The Supreme Court at Leipzig decided that a woman has a right to receive men visitors in her own apartments. The woman in question was an actress who

rented rooms from the tenant of a flat. The owner of the flats demanded that the tenant should forbid the actress from receiving male callers on the ground that it was disagreeable to the other tenants. The Supreme Court held that the prohibition of visits by men to the actress amounted to an illegal restriction on her personal liberty; that it must be left to one's own conscience to decide how far the reception of visitors offends against the laws of morality; and that the landlord cannot interfere with such visits so long as the peace and repute of the building are not flagrantly affected. It was not within the landlord's privilege to concern himself with the object of the visits to persons living in his building. Will London "flat landlords" now put a new clause in their agreements—"No male visitors allowed"?—*Ibid.*

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In Norway a woman judge, Mrs. Ruth Sorenson, of Hammerfest, has for the first time been appointed. She holds office temporarily, in the absence on leave of the town judge. Her appointment was the act of the superior magistrate of Finmarken. Mrs. Sorenson is an attorney. She is the daughter of a clergyman, was educated at the University, passed her juridical degree examination in 1900, and in 1907 established herself as an attorney in Christiania, whence she went to live at Hammerfest.—*Ibid.*

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"Should lawyers lie?" said Brown to Smith in the train one morning. "I don't know, but they do," said Smith. "No," said Brown, "it isn't a conundrum; it's a heading in the *Daily Mail.*" It was the subject of a debate at the annual congress of the German Barristers' Association at Breslau, when a resolution was adopted that "It is inadmissible to set up deliberately untruthful contentions or to deny truthful contentions."—*Ibid.*

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One of Wisconsin's new laws passed by the last Legislature commonly known as the "gossip law," was first applied last month, when a warrant was issued for the arrest of Mr. Peter Kesoski, of Niagara, the *Telegraph* states. The law provides that gossip shall be subject to legal penalties under the same conditions as slander, though with milder punishment, the amount of malice in the conversation being the distinguishing point between slander and gossip. The arrest follows the charge that Kesoski called Rosa Burney, of Niagara, an unsavoury name in conversation with friends in a bar-room.—*Ibid.*

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What damages should a man get for the loss of his moustache? Truly a difficult question. Some girls like them, some don't and then a man without a moustache saves money on table-napkins. An ex-flunkey has brought an action against the Chinese Legation at Paris for 4*l.* damages for the loss of his moustache. Some time ago, the *Telegraph* says, M. X., who boasted a splendid moustache, sacrificed it that he might enter the service of the Chinese Legation as valet at 8*l.* a month. M. X. would have accepted the sacrifice as an unfortunate necessity in this present ill-organised world had his position been permanent. But when in a week he got his marching orders, and was left *sans* moustache and *sans* situation, he sought legal satisfaction. He means to plead, among the injuries done him by his shaven state, the loss of the affections of a comfortably dowered *fiancee.* The lady evidently doted on the " militaire." The Court will also be invited to study the photograph of M. X. when moustached like a dragoon, looking first on this picture and then on that, presented by the denuded plaintiff, to appraise the æsthetic prejudice sustained by him. The jury may brutally remember that he can grow another, but female jurors would know and appreciate that a man's second moustache is never truly " silky."—*Ibid.*

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The Law Dinner.—At the dinner given by the Madras Bar Association on 11th October 1913, all the Judges of the High Court except Mr. Justice Sankaran Nair Mr. Justice Sundara Aiyar and Mr. Justice Bakewell, Dewan Bahadur C. Krishnan, Chief Judge of the 'Small Cause Court, Mr. C. R. Tiruvenkatachariar, City Civil Judge, The Advocate General, about 25 Barristers and advocates and over 150 Vakils and attorneys were present. After the loyal toasts were proposed by the Chairman, Dewan Bahadur M. O. Parthasarathi Iyengar in proposing the toast to His Majesty's Judges said :—

Mr. Chairman, Lord Chief Justice, my Lords and Gentlemen.—This occasion is unprecedented. For the first time it has brought together in friendly fraternity the various branches directly employed in the administration of justice. It cannot but rouse in our minds very vigorously the feeling that every one of us is but a part of the machinery designed to carry out the administration of Justice in the name of our King-Emperor. To me has been assigned the important duty of proposing the Health of His Majesty's Judges of the High Court of Judicature Madras, (cheers) and in selecting me for the task, our worthy Chairman had probably regarded the fact of my being the senior Advocate (cheers) and of my having at one

stage or other of my life been a Vakil, an advocate and a Judge, though in the subordinate judiciary and again an Advocate (Cheers). But the consideration of my being totally unused to functions of this sort had been ignored and it is possible that I may completely fail to do justice to the Judges. (Hear, Hear). The toast that I have the honour to propose and that I do propose with great pleasure is, fortunately, one that would meet with a very warm and enthusiastic response (Cheers), for the Bench unlike many another institution has always stood high and deservedly so in the esteem, regard, and I had almost said, the affection of all creeds and classes in this country. It has commanded in the past, commands at present, and I hope it (Cheers) will command, in the future, implicit confidence in its Judgments and unquestioned loyalty to its decisions (cheers). The integrity and independence of our Judges is being regarded day by day with greater and greater reverence and constitutes the real bulwark of liberty, (Cheers), liberty of every kind, personal civil or religious. That day will be an evil day for India, the Indians and the Government itself when our Judges cease to command that confidence, and I am sure that evil day will never arrive as long as we continue to have Judges of the kind that now adorn the Bench (cheers loud and continued.) Sir Arthur Collins said to His Excellency the Governor when accepting the charge of the present High Court Buildings which, by the way, I may say, are much more ornamental and much less useful than the old High Court Buildings (Laughter), "I fervently hope that long after you and I have passed away to that undiscovered country of which we know so little, there may always continue to be men of ability and courage who will administer the law without distinction of class creed, or race." (Cheers) That hope has up to this again and again been fully realized. May it be realized for ever is my pious hope and prayer in which I am sure you will all join. Socrates said "Four things belong to a Judge—to hear courteously, to answer wisely, to consider soberly and to give Judgment without partiality" (Cheers). And Bacon would require a Judge to be more learned than witty, more reverent than plausible, and more advised than confident. Above all, integrity is their personal and proper virtue. Do we not find these characteristics in a large measure in every one of our Judges ? (Hear, Hear.) It is a satisfaction to find that our Judges give a patient hearing even in these hard days of bombs and bullets, on one side, with Weekly Notes, Indian Cases, Law Journals and the like on the other, with a heap of arrears in front. It is also a satisfaction to find that none of our Judges has any favourite ; for to have a favourite is to give occasion to a multiplication of evils and suspicion of byways. Thus

I yield to none in my esteem and regard for the Bench as at present constituted. (Cheers.) And there is proof positive of the sincerity of my expressions in the standing testimony of myself having, by persuasion of pleasure and interest, not constrained to any extent by poverty, rejoined the Bar to practise before them. (Cheers.) I can boldly assert that our Judges are administering justice without fear of any but God and without hate of any but the wicked. Perhaps some of you, my Lords, in your extreme modesty may think I have been too lavish of praise in one direction or other. But even there I can justify myself in the words of Lord Bacon in whose eyes I have justified you. "Some praises come of good wishes and respects. It is a form due in civility to Kings and great persons. *Laud ando precipere* (entreat by praising them) when by telling them what they are they represent to them what they should be." (Laughter and cheers). My Lords, I assure you that I am sincere in my expressions. With these words I give you the toast of the Judges of His Majesty's High Court of Judicature Madras coupling it with the revered name of Sir Arnold White, our Chief Justice.

Much enthusiasm prevailed when this toast was responded to.

CHIEF JUSTICE'S REPLY.

The Hon'ble Sir Arnold White, the Chief Justice, who on rising was loudly cheered, responding on behalf of the Bench said:—

Mr. Advocate General and Gentlemen.—On behalf of the High Court Bench I desire to thank Mr. Parthasarathy Aiyangar for the toast which he has just proposed. I can assure him that we appreciate the kindly and generous terms in which he has proposed the health of the Judges of the High Court. In his closing observations he suggested that we do not altogether realise the absolute ideal. (Mr. Parthasarathy Aiyangar No.! No.!). That perhaps is a little more than any of you should expect. I desire also to thank you, Gentlemen, for the friendly and cordial reception which you have given to this toast. I can assure you, we appreciate the compliment which has been paid to us. It may be that on other occasions, and in another place, a certain divergence of view may sometimes manifest itself amongst the Judges of the High Court. But on this occasion in expressing our appreciation of the compliment which has been paid to us, the Judges are absolutely unanimous. (Cheers).

Gentlemen, I suppose the proposal of the health of the Judges of the High Court is more or less an invitation to us to talk about ourselves (Hear, hear). To talk about one's self is a somewhat

difficult task to approach. It is a task which has to be undertaken with considerable discretion. It is a task which is not altogether easy to fulfil gracefully. However, I think with regard to the Judges of the High Court I can make one observation which is entirely of a noncommittal character, and which is beyond the bounds of controversy, and that is we are ten (Laughter). A few years ago we were only able to say "we are seven." Well, there was no particular merit about that statement, or about that number, excepting possibly the poetic associations which it might evoke. We are ten now; and, Gentlemen, in my opinion, we are none too many. It may be that we are not enough as some of you think. With regard to that, with all reserve and as at present advised, a saving clause is always safe on these occasions—I am inclined to think that we are enough. There is one thing which is very satisfactory to note and that is, the powers that be, the authorities who hold the purse strings, are always ready to give sympathetic consideration to any proposals, which may come from the High Court with regard to the increase of the number of the High Court Judges or the strengthening of the Judiciary generally throughout this Presidency. This is so now, Gentlemen, without a doubt. It was not always so. I do not mean to suggest that every proposal which emanates from the High Court, for instance, that a particular officer deserves a higher scale of remuneration than that which he is at present receiving is received with acclamation by the powers who hold the purse strings. But still, speaking generally, we may rely upon the local Government affording a sympathetic consideration to any proposal which we may make and so far as practicable giving effect to it.

Gentlemen, I have noted with considerable interest that the criticisms which one reads of and hears in England with reference to the Administration of Justice in England are not unlike the criticisms of which one hears in this country. In England apparently at the present moment with reference to the High Court of Judicature, one cause of complaint is the insufficiency of Judges. In that respect I am not at all sure that we are not more fortunate here than are the Judges at Home.

Another matter is with reference to the protracted hearing of cases. We have heard something very like that in this country. But it is interesting to note that complaints of similar character are not unknown in England. With regard to the prolixity of advocates, I am afraid that, to a very considerable extent, we must plead guilty. It is not altogether easy in this matter, or in other matters,

to hit the happy medium. I fully recognise the desirability of despatch and expedition with reference to judicial business. But there is a higher consideration than that with regard to the disposal of cases (Hear, Hear); and that is that the defeated litigant, when he leaves the Court although he knows he has been beaten, may have the conciousness that his case has been given a full and fair consideration. (Hear, Hear). There is a phrase which one hears sometimes in this country *viz.*, "Getting rid of cases." I strongly object to that phrase. (Hear, Hear). Judges are not here to get rid of cases. They are here to adjudicate upon them.

Many of you are familiar with the story I have told before. On a certain occasion Mr. Justice Wright was sitting as a vacation Judge. He met Lord Bowen at luncheon after having done his morning work. He said to Lord Bowen; "You know I had some hundred applications in Chambers this morning and I disposed of them all in an hour and three-quarters." On that Lord Bowen said; "My dear Wright, Don't you think you had better go back and hear the other side" (Laughter.) It was once said of a Judge in England that he combined all the qualities of a bad Judge. His critics said; he was slow, he was courteous and he was wrong. I am not prepared to admit that courtesy is one of the characteristics of a bad Judge. If I am to find an antithesis for this description of a bad Judge, as a man who is slow and courteous and wrong, I would rather say a good Judge is a man who is quick, courteous and right. Again, I desire to make a non-committal statement and I think I may say that it is not universally true that all three of these admirable qualities, these excellent characteristics are to be found embodied in one and the same Judge, though I am not altogether sure that every judicial officer present here to-night does not in the bottom of his heart think, though he would not say so for worlds, that he probably embodies in his person all these three qualities (Laughter and Cheers). What other people may think is, probably, a different matter.

Gentlemen, during my fourteen years of office, I have seen a good many changes, and I think no change is more significant than that to be found in the fact that such a very large number of Hindu Gentlemen should have assembled at this evening's dinner (Cheers.) I sincerely trust that none of us will suffer any inconvenience, gastronomic or otherwise, as the result of this evening's feast. As I have said I have seen many changes. I have seen many changes in the personnel of the High Court Bench. I am the only survivor of the Judges who held office in 1899, when I was appointed Chief

Justice. Of the men who have been my colleagues Davies, Moore, Boddam, Bashyam Aiyangar and Krishnaswami Aiyar are dead. Shephard, Subramania Aiyar, Munro and Benson are happily still alive though they are no longer with us as Judges.

If I turn to the Bar there also I find great changes. Speaking for the moment of the Vakil Bar, at one time Bhashyam Iyengar, Krishnaswami Aiyar, Sankaran Nair, Sundara Aiyar and Sivasami Aiyar were all practising at the same time. There were giants on the earth in those days. Since then of course the work of these great leaders has become widely distributed. I do not suggest for a moment that that is any cause for complaint. Probably those who participate in the distribution will agree in that sentiment.

Turning for a moment to the European Bar, I mean the European Barristers. Fourteen years ago, I recall Eardley Norton, Kenworthy Brown, Robert Grant and two or three others who are still with us. Gentlemen, as regards the quality of English Barristers who now practise in the Madras High Court I say nothing. As regards the quantity, there has undoubtedly been a very sad falling off. I admit that personally, I greatly regret it. I wish it were not so.

Then I turn for the moment to the Indian Barristers. If there has been a falling off in point of numbers as regards English Barristers, there has certainly been no falling off in point of numbers as regards the Indian Barristers who are enrolled as advocates of the High Court of Madras. (Cheers). They have been arriving in increasing numbers and they still continue to arrive. I am afraid with regard to a considerable number of them, it will be a question of waiting, of patient waiting. But I should like to say to them, as I believe, I said on another occasion. Whatever you do, do not simply wait for briefs. Do something, report, write law books,—even though they are bad law books best, of all probably, attach yourself to somebody who is on the upward flight. Take hold of his coat tails and stick to them. Or if the professional gentleman to whom the young Indian Barrister attaches himself does not wear coat tails take hold of whatever be the appropriate portion of the corresponding garment. In any case stick to him, make yourself necessary and if possible indispensable. You will find in time that you will get crumbs from the rich man's tables and those crumbs will increase in magnitude and power of sustenance as time goes on. Whatever you do, don't wait doing nothing.

Gentlemen, in an after-dinner speech one, of course, is not in a spirit of criticism. But it has sometimes occurred to me that if I

were to offer any criticisms with regard to the method of advocacy employed by younger Vakils and younger Barristers, it is that they do not always exercise a due sense of proportion with reference to the relative importance of their bad points and their good points. Now, if a man has half a dozen bad points and one good point, it is not, as a rule, desirable that he should present his six bad points first and keep the one good point for the last; because, it may happen, that, by the time that the good point is reached, the Judicial mind may be a little tired, possibly a little irritated, and not altogether able to appreciate the excellence of the good point. I hope you will take this criticism in the spirit in which it is offered. (Cheers). Gentlemen, at the same time I am not altogether sure that it is always a good thing to press even all your good points. You may possibly have read in Lord Campbell's Lives of the Lord Chancellors how an eminent Counsel, speaking of an eminent Judge, said "Whenever I appear before him, I always keep back one good point, because I know he will probably find that out for himself and he will be so pleased at his own acumen in doing so that he will probably decide in my favour." I doubt if I ought to have told that story but you will find it in Lord Campbell's Lives of the Lord Chancellors. There is this risk about it. If you keep back the good point and the Judge is not sharp enough to take it the result may be disastrous.

With regard to the question of waiting for work, I have a little anecdote which will appeal specially to Indian Barristers. The Indian Barristers, at any rate know that in the Chambers of Inns of Court, there is to be found outside every set of Chambers a long list of names of Barristers, in many cases, most of them recently called and waiting for work. I recollect one set of Chambers not of very conspicuous magnitude in which the list of names outside the door was of portentous length. Probably as regards a great majority of these newly called Barristers the average of briefs they got a month would be something fractional. There came along a rude solicitor's clerk. He studied this portentous list of names and wrote underneath it in pencil. "How in the world do the poor devils all live"? I do not tell this story to the Indian Barristers, in any way to damp their ardour. I certainly do not tell it to them with a view of applying to them the epithet which the rude solicitor's clerk made use of, but it may probably be some encouragement to them to reflect that it is not only in Madras there is to be found an undue proportion between the number of men seeking work and the amount of work which there is to go round.

May I say one word with regard to another matter which really does not come within the province of your professional duties but still, is I think a matter of some importance. I do think that advocates ought to be the custodians of the King's English and upholders of the purity and dignity of the English Language. I may possibly offend you with regard to what I am going to say; but as this is an after-dinner speech and, probably you are all in a benevolent frame of mind, I propose to say it. I remember when I first came to this country, I was rather struck by the constant use of certain forms of abbreviations in forensic language which seemed to me to be unnecessary and which I cannot help describing as vulgar. One constantly hears of reference to 'M.P.' Now what is an 'M.P.'? I am credibly informed, it is a miscellaneous petition. But it may just as well be a Member of Parliament. I recall one occasion, an occasion on which I was much in the same position as the young Indian Barristers to whom I was referring. I was sitting in Court having nothing particular to do. A friend of mine was arguing a case. It was in the Court of the Lord Chief Justice, Lord Coleridge, and my friend said "I desire to refer your Lordship to a case reported in 14 Q.B.D." Lord Coleridge leaned forward and said "Mr., What is Q.B.D? Q.E.D. I know, but what is Q.B.D?" That is an instance which impressed itself very firmly on my memory. It seems to me Queen's Bench Division is more consonant with the dignity of the occasion in which it is used than 'Q.B.D.'

We know that pleadings and judgment are divided into paragraphs. We very seldom hear of paragraphs in this country. It is "para," Gentlemen, why "para"? "Para is a meaningless abbreviation. It might mean paralytic or parasite or parallellogram. I quite admit paragraph is a word of 3 syllables and para is a word of 2 syllables. But affidavit is a word of 4 syllables, and no one talks about an "affit. I am perfectly aware that we lawyers are not the only or the chief sinners in this respect. I believe I have heard the word para from the mouth of a member of Council and I am not sure that I have not heard it from the mouth of a Viceroy. But nevertheless I protest against it. There is another word which is not quite as bad. We do not hear of promissory notes but of "pro-notes." Pro is a meaningless abbreviation. It means nothing. I admit that "pro note" is not as bad as para. I think that the Advocates of Madras would do well to set a good example to the rest of India in this respect. I have gone a considerable distance from the subject of this toast. However I hope you will forgive me.

Now, to come back to the toast. I have nothing more to say except that we thoroughly appreciate the honor which you have done to the Judges to-night. I have struck no serious note this evening because it seems to me that a dinner is not the occasion for the discussion of serious matters. I do not know whether this evening's feast is to be the first of a series. But if it is to be the first of a series and if there be another one next year, I cannot forget that it is not in the least likely that I shall be present at that feast. I have been fourteen years doing Judicial work in Madras and my work as a Judge in Madras is very nearly done. Looking back over these fourteen years I am conscious that many things were done which had better not have been done and I am still more painfully conscious of many things not having been done which had better have been done. Still I think I can say honestly that during these fourteen years I have striven to do my best (Hear, hear). I believe all stages of the profession as regards standing are represented here to-night. There are I doubt not here many men who can look back upon a record of work well done. There are other men who are half way through their professional career. There are many others, possibly the majority, whose professional life mainly lies in front of them. You, younger men, before I sit down may I say one word to you. On you, rests the responsibility. You are the trustees for posterity. I would urge upon you to do your best to preserve the best traditions of the great profession to which you belong. (Cheers). I thank Mr. Parthasarathy Aiyangar for the toast and I thank you Gentlemen for the way in which you have received it (Cheers).

The Hon'ble Mr. T. Richmond next proposed the toast to the other Judges, Dewan Bahadur C. Krishnan responding.

Mr. Justice Miller next proposed the toast to *the Legal Profession.* His Lordship in a felicitous speech, referred to the great difference between the estimate of the legal profession by the profession itself and by the laymen. " But " his Lordship said "as a body, the legal minds are doing all they can for their fellowmen and as long as they continue to do so whether you persuade the layman to change his opinion or not, you will be at any rate worthy of the toast which I have the honor to propose."

Dr. Swaminathan responded to the toast on behalf of the Advocates.

Mr. T. R. Ramachandra Aiyar, responding on behalf of the Vakils, said that nothing made it so clear that the layman's view of the profession was wrong as the fact that lawyers when they became judges made good judges which it should have been

impossible if the profession was really so bad. A gathering of the kind, he said, enabled them to feel the unity of the purpose of the legal profession and the Bench.

CONTEMPORARY LEGAL LITERATURE.

Mr. Longsford's article in the Case and Comment for August on "The Common Laws' debt to Annotations" is the second of the series of which the first was Mr. Fernham's noticed in the last issue of our journal which try to appraise the value of annotation in the making of the law. Three classes of lawyers have made the English law, he says, the advocates, the judges and the writers. It is the writers that have prevented the law from being unscientific and chaotic in the overwhelming mass of precedents of varying worth and authority. Of the writers, there are three prime classes *viz.*, reporters, digesters and the commentators whose work is now done by the annotators. First came the reporters and commentators though even now there are occasionally good commentaries like that of Wigmore. Then as the reports grew digests like Comyn's digest came in. Now, cases have become so numerous that something more critical than mere digests, something more exhaustive than commentaries have become necessary and as the final step in the evolutionary process have appeared annotations. Annotations are of two kinds, the critical and the "extra" as they are called. The former take up some of the leading cases and under each case all the cognate cases are carefully analysed, systematised and the principle which they elucidate is explained. In a system of law like the English and American, one cannot have too many cases. It is the duty of the annotator to classify them and show how each case illustrates a different phase of the same underlying principle. The function of extra annotations is to show by case law how the law has developed and has come to be what it is now.

BOOK REVIEWS.

All India Century Digest by Mr. B. R. Desai, Vol. X. This brings us up to Symbolical Possession. With another volume, the Digest shall have been complete. The work has been pushed forward with commendable diligence and we are glad to be able to affirm that it is none the worse for it. Far from showing any deterioration the work has been steadily improving in quality and the present volume seems to be really very good.

Indian Decisions (*New series*) Allahabad Vol. 8 (I. L. R. 16 to 18), Madras Vol. 1 (I. L. R. 1 to 4) Published by T. A. Venkasamy Rao and T. S. Krishnasamy Rao. The energy with which the enterprising Editors of this series have set about their work is really phenomenal. We are glad that we are at the same time able to testify that they are maintaining the same level of perfection as well.

All India Civil Court Manual. Vol. II by the Lawyer's companion office. This volume is the companion volume to the one already noticed by us. All the acts have been revised and brought up-to-date. We see that even Acts of 1913 have been included. The get up is excellent.

The Specific Relief Act with commentaries by Mr. Mahim Chandra Sarkar: (1913). Mr. Mahim Chandra Sarkar has acquired a reputation for producing useful commentaries. The present volume does not belie that reputation. As a digest of the case law bearing on the Specific Relief Act, the work leaves little to be desired. We have looked through the book somewhat carefully; we have throughout found it up-to-date and exhaustive. It is set in most agreeable types. The notes are full and clear. We heartily commend the book to the profession.

The Negotiable Instruments Act (1913) by Mr. Desai Narottam. This book is prepared on the same plan as the author's Registration Act and is likely to be as popular. The distinctive feature of the work is its paragraph headings which enable the practitioner to take in the whole contents without much effort. The notes seem to be full and fairly exhaustive. The book is up-to-date. The appendices which contain the Bills of Exchange Act, the relevant portions of the Companies Act, Limitation Act and Stamp Act, and the rules and notifications under the Act form a valuable supplement to the Act.

The Coronation Durbar and its consequences; a second supplementary chapter to the Government of India by Sir Courtenay Ilbert, G. C. B. K. C. S. I. Clerk of the House of commons and some time Law Member of the Council of the Governor-General of India in Council published by the Clarendan Press, Oxford 1913 Price 2 s. 6 d.

It is a good idea of the author to issue a Supplement to his Government of India in regard to the changes in the constitution effected by his Majesty's proclamation at the recent Coronation Durbar and the statutes and Acts passed with reference to that. The author also gives the Correspondence between the Government of India and the Secretary of State previous to the Coronation Durbar which led to the announcements made at the Durbar. This is a second supplement issued after the publication of the last Edition.

Psychology applied to legal evidence and other constructions of law: by G. F. Arnold I. C. S. C. I. E. 2nd Edition, 1913. Published by Messrs. Thacker Spink & Co.

Mr. Arnold has an aversion for lawyers and makes no secret of it. The lawyer of Mr. Arnold is a person very dense and quite incapable of appreciating good psychology. Apart from the question as to validity of the assumption that good phychology is necessarily good law (the author does not seem for a moment to realise the possibility of law by being over refined becoming unintelligible and thus defeating its own object), one must confess one feels wholly unconvinced by Mr. Arnold's book that law is even bad psychology. How, on earth, rules of evidence enacted in the Evidence Act require a Judge to take human nature in parts passes one's comprehension. One thing that constantly struck us during the reading of the book was the assumption of the author that his conclusion as to the psychological correctness of the statement of a rule was a conclusive test of its wisdom. For instance, the writer says a deal about the incorrectness of the interpretation by the Privy Council of the word "intentionally" in S. 115. We have striven hard to find what the author has to say against the propriety of the rule as enunciated by the Privy Council but there is not a word about it. After all in a matter so eminently practical as law, is not substance all and mere form nothing provided the meaning is clear or has been made clear. The author's attack on the view of the Penal Code as to insanity is not wholly unmerited but there is nothing novel in it. In this Edition, the author has attempted to answer his critics with regard to his attack on the lawyer's view as to intention, will &c., but we are not at all sure he has really met them. Many of the objections are phantoms of his own raising and law is not responsible for it. The author's remarks about racial characteristics savour too much of the commonplace in so far as they are just but where they strive to be

original they generally ignore the fundamental identity of the human nature which no amount of pigment can ever destroy. The criticisms of the author on rules of evidence and the authority of precedents betray belief in the capacity of individual judges to an extent which having regard to our knowledge of the average judicial capacity it is utterly impossible to accept as in the least justified. The book while shewing signs of wide reading and considerable thought, betray all the defects of the work of a mere theorist who never looks to the practical consequences of the theories he propounds.

Sanjiva Rao's Digest of Privy Council Rulings up to the end of 1912. Third Edition (1913) Vol. I. A to H. by C. S. Somanatha Sastri B.A, B.L. First Grade Pleader, Trichinopoly, published by the Law Printing Honse, Mount Road, Madras.

Nearly ten years have elapsed since the publication of the last edition and the necessity for publishing a third edition of the Digest of the Privy Council rulings can hardly be denied. The Allahabad Law Journal, the Calcutta Law Journal and some of the publications in Madras came into existence after the issue of the 2nd Edition. Apart from this appeals to the Judicial Committee are more frequent now than in former days. The number of rulings now published has therefore considerably increased. In the present edition an attempt has been made to digest the Privy Council cases prior to 1836. The labour involved in digesting these rulings and giving them under appropriate headings is no doubt enormous. The value of a digest to a practitioner is in proportion to the facility afforded therein of finding out cases on points he has to consider. Digest writers should remember that their aim should be to enable the practitioner to find out the case they want on a given point easily though the case is quite unknown to them. If the digest only enables the practitioner to find out a case when the case is known to him, it is hardly much use having it. Very often various points are decided in the same case and there are also obiter dicta which being those of the Judicial committee will have a high value and be useful to the practitioner. Cases should be digested with reference to these different points. We hope the Editor will bear this in mind when bringing out the 2nd volume. There can be no doubt about the pains taken by the Editor in arran-

ging different headings and sub-headings. Owing to the large increase in the Notes which will be much appreciated by the profession one finds it difficult to distinguish Privy Council decision digested from other matter. The number of the decisions may be given in antique instead of the year. We hope the book will be found useful by the profession.

A Digest of English Civil Law B. K. III Ss. III to XII Edited by Edward Jenks M. A. B. C. L. Published by Butterworth and Co. The Digest of Civil Law by Jenks is too well known to the profession to require any special introduction from us and the name of Jenks is sufficient guarantee for the excellence of the work. The present volume deals with restrictions on the user alienation of land (conditions and covenants running with the land) Voluntary alienation of land, Involuntary alienation of land, Overriding powers affecting land, Incapacity to hold and alienate land, Possession, ownership and acquisition of ownership of chattels, Involuntary alienation of chattels and incapacity to hold chattels.